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No. 2413

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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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Transcript of Record.

(IN FOUR VOLUMES.)

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EDWIN F. MEYER and EMAR GOLDBERG,  
Plaintiffs in Error,  
vs.

THE UNITED STATES OF AMERICA,  
Defendant in Error.

---


VOLUME I.  
(Pages 1 to 352, Inclusive.)

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Upon Writ of Error to the United States District Court  
of the Western District of Washington,  
Northern Division.

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**FILED**  
**JUL 1 - 1914**



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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States for the  
Western District of Washington, Northern Divi-  
sion.*

No. 2039.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

EDWIN F. MEYER, J. A. KETTLEWELL,  
EMAR GOLDBERG, W. A. CORDER and  
E. SILVERSTONE,  
Defendants.

**Names and Addresses of Counsel.**

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CHARLES F. RIDDELL, Esq., Attorney for Plaintiff and Defendant in Error,  
310 Federal Building, Seattle, Washington.

[1\*]

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*United States Circuit Court, Western District of  
Washington, Western Division.*

February Term, 1911.

No. 2039.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

EDWIN F. MEYER, J. A. KETTLEWELL,  
EMAR GOLDBERG, W. A. CORDER and  
E. SILVERSTONE,  
Defendants.

**Indictment.**

The United States of America,  
Western District of Washington,—ss.

The grand jurors of the United States of America,  
duly empaneled, sworn and charged to inquire  
within and for the Western District of Washington,  
upon their oaths present:

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\*Page-number appearing at foot of page of original certified Record.



That on the 2d day of June, A. D. 1908, and for a long time prior thereto, one Edwin F. Meyer, late of the Western District of Washington, and within the jurisdiction of this Court, was an officer of the said United States, and a person acting for and on behalf of the said United States in an official capacity, under and by virtue of authority of a Department of the Government thereof, that is to say: Principal clerk in the office of the general storekeeper of the United States Navy Yard, Puget Sound, Washington, in the Navy Department of the United States, and at the time and during the period aforesaid did act as such and perform the duties of such principal clerk; that by reason of his being such officer and person acting as aforesaid under the law and [2] regulations theretofore and pursuant to law prescribed and promulgated by the Secretary of the Navy of the said United States for the government of his department, and the conduct of its officers and clerks, and in force at said time and during the said period, he was vested with sundry powers, duties and discretions, and amongst other things, with power, duty and discretion in suggesting and causing to be determined and in determining from time to time the minimum amount of supplies of various kinds and descriptions which should be kept on hand by said storekeeper of the Navy Yard Puget Sound in the storehouse in the navy yard aforesaid, in proposing and recommending from time to time the purchase of various kinds of supplies ——— for use in said navy yard, in devising and drafting from time to time specifica-

tions of the supplies so proposed and recommended to be purchased as aforesaid, in suggesting and causing to be issued and in issuing requisitions for the purchase thereof and recommending the approval of such requisitions by his superior officers, in suggesting and causing to be placed and in placing on such requisitions the estimated cost of the supplies therein specified, in suggesting and causing to be fixed and in fixing the time designated in said requisitions within which the successful bidder would be required to deliver such supplies, in suggesting and fixing and causing to be fixed the time when such requisitions should be forwarded from the office of said storekeeper of the Navy Yard, Puget Sound, to the Bureau of Supplies and Accounts, Navy Department, Washington, D. C., and to the United States Navy Pay Office at Seattle, Washington, in giving out of information in regard to such requisitions, in suggesting and devising ways and [3] means for the receipt at said Navy Yard, Puget Sound, of such supplies so requisitioned as aforesaid, and in suggesting and recommending the acceptance or rejection of such supplies by the said Storekeeper aforesaid.

That on the 2d day of June, A. D. 1908, and for a long time prior thereto, one J. A. Kettlewell, late of the Western District of Washington, and within the jurisdiction of this court, was an officer of the United States, and a person acting for and on behalf of the said United States in an official capacity, under and by virtue of authority of a Department of the Government thereof, that is to say: Chief

Clerk to the Navy Pay Officer in the United States Navy Pay Office at Seattle, Washington, in the Navy Department of the United States, and at said time and during the period aforesaid, did act as such and perform the duties of such Chief Clerk; that by reason of his being such officer and person acting as aforesaid under the law and the regulations theretofore and pursuant to law prescribed and promulgated by the Secretary of the Navy of the said United States for the government of his said department, and the conduct of its officers and clerks, and in force at said time and during said period, he was vested with sundry powers, duties and discretions, and amongst other things, with power, duty and discretion in suggesting the disposition of and disposing of the requisitions for supplies received from the Storekeeper of the Navy Yard, Puget Sound, Washington, and from the Bureau of Supplies and Accounts, Navy Department, Washington, D. C., in giving notice to the public that competitive proposals and bids would be received by the paymaster of the United States Navy Pay Office at Seattle, Washington, for the purchase of [4] supplies for the Storekeeper, Navy Yard, Puget Sound, in the preparation of and sending out to the public of proposals containing specifications of the supplies covered by said requisitions, in suggesting and devising ways and means of receiving bids and proposals, in recommending the award of and awarding contracts to the successful bidders, in suggesting the approval or rejection of the accounts rendered to said pay-



master of the United States Navy Pay Office by such successful bidder, according as such account should be fair and honest or false and fraudulent, in suggesting and recommending the payment or nonpayment of such amounts so claimed by such successful bidder to be due him for supplies furnished according as such claims were honest and fair or false and fraudulent, in suggesting and causing to be issued, mailed and delivered, and in issuing, mailing and delivering to the successful bidder the check of the Paymaster of the United States Navy Pay Office at Seattle, Washington, for and in payment of the claim of such successful bidder for supplies so forwarded to the Storekeeper, Navy Yard, Puget Sound, Washington.

That on the 2d day of June, 1908, and for a long time prior thereto, one Emar Goldberg was a resident of Seattle, Washington, in the Western District of Washington, and within the jurisdiction of this court, and was manager of the Seattle branch of the Great Western Smelting and Refining Company of San Francisco, California, a corporation theretofore organized and existing under and by virtue of the laws of the State of California, and having offices in San Francisco, Chicago, Seattle, Los Angeles, St. Louis, and Vancouver, B. C., said branch of the Great Western Smelting and Refining Company at [5] Seattle, Washington, then and there being engaged in the business of buying and selling scrap iron, tin, zinc, brass, copper and kindred articles.

That on said 2d day of June, A. D. 1908, and for

a long time prior thereto, one W. A. Corder was a resident of the city of Seattle, in the Western District of Washington, and within the jurisdiction of this court, and was manager of a mercantile business operating under the firm name and style of W. A. Corder Company, and was engaged in the business of buying and selling machinery and machinery supplies.

That on the 2d day of June, A. D. 1908, and for a long time prior thereto, one E. Silverstone was a resident of Seattle, in the Western District of Washington, and within the jurisdiction of this court, and was engaged in conducting a hotel located in Seattle, known as The Herald, said E. Silverstone being then and there a part owner and the manager thereof.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That on or about the 2d day of June, 1908, within the Western District of Washington and within the jurisdiction of this court, the said Edwin F. Meyer and the said J. A. Kettlewell, being such officers and persons in the employ of the Navy Department of the United States as aforesaid, did unlawfully and maliciously conspire, combine and confederate with the said Emar Goldberg, W. A. Corder and E. Silverstone, and with certain other evil-disposed persons whose names are to the grand jury unknown, knowingly to defraud the United States of divers large sums of money by means of a certain fraudulent scheme devised by the said Edwin F. Meyer, [6] J. A. Kettlewell, W. A.



Corder, Emar Goldberg and E. Silverstone, and which was then and there in process of execution by them; that said fraudulent scheme was first devised, concocted and put in operation in said Western District of Washington by and between said Edwin F. Meyer, J. A. Kettlewell, W. A. Corder, Emar Goldberg and E. Silverstone on or about the first day of April, 1908, and was continuously in process of execution in said Western District of Washington by and between the said Edwin F. Meyer, J. A. Kettlewell, W. A. Corder, Emar Goldberg and E. Silverstone, from about the said 1st day of April, 1908, to and including the 2d day of June, 1908, and was then and thereafter in process of execution by and between the said Edwin F. Meyer, J. A. Kettlewell, W. A. Corder, Emar Goldberg and E. Silverstone, in their acts done to effect the object of said conspiracy.

That the said fraudulent scheme contemplated that, as the said Great Western Smelting and Refining Company at Seattle, Washington, and said W. A. Corder Company had on hand on, to wit, the said 1st day of April, 1908, a large stock of zinc, rolled sheet, boiler plates, the said Edwin F. Meyer should with fraudulent intent issue, and cause to be issued by the United States Navy Yard, Puget Sound, Washington, a requisition for the purchase for use at said Navy Yard of a large quantity of zinc, rolled sheet, boiler plates, and should place and cause to be placed in said requisition as the estimated cost price of such zinc, rolled sheet, boiler plates, a price in excess of the fair market value

thereof, and should place and cause to be placed in said requisition as the time in which the successful bidder should deliver the said zinc, rolled sheet, boiler plates, to the said United [7] States Navy Yard, Puget Sound, so short a time of delivery that none but merchants of Seattle and vicinity could comply with said requirements, and so that none but said merchants of Seattle and vicinity would be able to furnish said zinc, rolled sheet, boiler plates, and would be able to enter into competition for such contract, and should, with fraudulent intent, so devise and draft the specifications contained in said requisition as to the kind and nature and quality of said zinc, rolled sheet, boiler plates, to be furnished within the said time of delivery, that none but the said Great Western Smelting and Refining Company and said W. A. Corder Company could comply with said requirements.

That from time to time the said Edwin F. Meyer should notify the said J. A. Kettlewell, Emar Goldberg, W. A. Corder and E. Silverstone of the progress of such requisition, so that they, the said J. A. Kettlewell, Emar Goldberg, W. A. Corder and E. Silverstone would be able to prevent legitimate competition.

That E. Silverstone, without authority so to do, should ostensibly represent a certain alleged mercantile establishment designated as the Fowler Metal Company of San Francisco, but actually represent and act for and in behalf of said Great Western Smelting and Refining Company and said W. A. Corder Company, and should at the proper time



offer for filing and file with the United States Navy Pay Office at Seattle, Washington, a proposal and bid to furnish at a price greatly in excess of the fair or true market value thereof, the said zinc, rolled sheet, boiler plates so to be requisitioned for use at the said Navy Yard, Puget Sound, aforesaid, purporting to be the proposal and bid of the Fowler Metal Company of San Francisco, but to be in reality the proposal and bid of said E. [8] Silverstone acting for and in behalf of the Great Western Smelting and Refining Company and said W. A. Corder Company.

That when said requisition in due course should reach the United States Navy Pay Office at Seattle, Washington, the said J. A. Kettlewell, with fraudulent intent, should send out proposals containing the specifications of the zinc, rolled sheet, boiler plates, so desired to be purchased for the use of the Navy Yard, Puget Sound, to a list of merchants in Seattle and vicinity, which should contain the names of no merchants other than the Great Western Smelting and Refining Company, Seattle, Washington, W. A. Corder Company, Seattle, Washington, and said Fowler Metal Company of San Francisco, except the names of such merchants who were known to said J. A. Kettlewell to be unable to furnish said zinc and would be unable to bid for said contract.

And the said J. A. Kettlewell should, with fraudulent intent, examine the bids and proposals to furnish such zinc, rolled sheet, boiler plates, so thereafter to be received at the said United States Navy

Pay Office, Seattle, Washington, and should ascertain whether or not in fact any merchants other than the said Great Western Smelting and Refining Company, said W. A. Corder Company, and the said Fowler Metal Company, had in fact bid thereon, and should so manipulate and alter and change such bids, if any, that no person, firm or corporation should be awarded the contract to furnish said zinc other than either the said Great Western Smelting and Refining Company, W. A. Corder Company or Fowler Metal Company, or some person, firm or corporation acting for and in behalf of either the said Great Western Smelting and Refining Company, or said W. A. Corder Company. [9]

That said J. A. Kettlewell should recommend to the Paymaster of the United States Navy Pay Office at Seattle, Washington, and arrange to have accepted the bid and proposal of said Fowler Metal Company so to be offered and filed by the said E. Silverstone, and should arrange to have awarded to said Fowler Metal Company the contract for the furnishing of said zinc, rolled sheet, boiler plates, so to be requisitioned, as aforesaid; that said Edwin F. Meyer should arrange to have said zinc, rolled sheet, boiler plates, which would be forwarded to the United States Navy Yard, Puget Sound, by said Great Western Smelting and Refining Company and said W. A. Corder Company in fulfillment of the Fowler Metal Company contract, accepted without question, and said J. A. Kettlewell should recommend and secure the approval of the account as shown by a certain certified bill to be filed, and caused to be filed, by said



E. Silverstone with the United States Navy Yard, Puget Sound, Washington, purporting to be the certified bill of the Fowler Metal Company, showing delivery of said zinc, rolled sheet boiler plates, and the acceptance of same at said Navy Yard, Puget Sound, and that none of said zinc, rolled sheet, boiler plates had been paid for, and should recommend and secure the issuance by the Paymaster at the United States Navy Pay Office at Seattle, Washington, of a check payable to the order of the said Fowler Metal Company for the amount appearing to be due the said Fowler Metal Company according to the account so to be rendered as aforesaid, and should arrange to have said check delivered to said E. Silverstone or said Emar Goldberg.

And that the object and purpose of said unlawful conspiracy was that said Edwin F. Meyer and said J. A. Kettlewell should so fraudulently exercise said powers, duties and [10] discretion of their said offices that there should be no real competition in the bidding for the contract to supply said zinc, rolled sheet, boiler plates, for the use of the United States Navy Yard, Puget Sound, and that the said Great Western Smelting and Refining Company and said W. A. Corder Company, under the name of some one of them, or some other person or corporation for their benefit, would be the only bidders, and that the contract to furnish said zinc, rolled sheet, boiler plates, would be obtained by either the said Great Western Smelting and Refining Company, W. A. Corder Company, or Fowler Metal Company, or by and in the name

of some other person or corporation, but secretly for the benefit of said Great Western Smelting and Refining Company and said W. A. Corder Company; and it was further the object and purpose of said unlawful conspiracy, that the United States should pay for said zinc, rolled sheet, boiler plates a price greatly in excess of its real value, and that said conspirators should obtain for themselves an exorbitant and unreasonable profit in the sale of said zinc, rolled sheet, boiler plates, to the said United States; and it was further the object of said unlawful conspiracy that said persons, to wit: Edwin Meyer, J. A. Kettlewell, Emar Goldberg, acting for and as the agent and manager of said Great Western Smelting and Refining Company, W. A. Corder, acting for and as the manager of W. A. Corder Company, and E. Silverstone, or some of them, should appropriate and convert to their own use such unreasonable profits so fraudulently to be realized from the sale of said zinc, rolled sheet, boiler plates, to the said United States, the proportion in which said unreasonable profits so fraudulently to be realized from the sale of such zinc, rolled sheet, boiler plates, to the United States, should be divided between Edwin Meyer, J. A. Kettlewell, Emar Goldberg, acting for and as the agent and [11] manager of said Great Western Smelting and Refining Company, W. A. Corder, acting for and as the manager of W. A. Corder Company, and E. Silverstone, or some of them, being to the grand jurors unknown.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That in pursuance



of said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said J. A. Kettlewell, on or about the 1st day of June, 1908, in the Western District of Washington and within the jurisdiction of this court, being such officer and person acting as aforesaid, did then and there deliver, and cause to be delivered, to the said Emar Goldberg, a certain check signed by Robert H. Orr as Paymaster of the United States Navy Pay Office, Seattle, Washington, and drawn on The Seattle National Bank, Seattle, Washington, a United States Depositary, for the sum of Seven Thousand Four Hundred and Seventeen and 09/100 Dollars (\$7,417.09), payable to the order of the Fowler Metal Company, which said check was then and there in words and figures following, to wit:

	No. 82.	U. S. Navy Pay Office,
		Seattle, Washington, May 26th '08.
United States Depositary.	The Seattle National Bank, Seattle, Washington.	
State Object for which Drawn.	United States Depositary.	order
Zincs. 1725.	Pay to Fowler Metal Co. or <del>bearer</del>	Seventy
	four hundred and seventeen 09/100 Dollars.	
	\$7417.09/00	ROBERT H. ORR,
		Paymaster, U. S. N.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said J. A. Kettlewell, on or about the 1st day of June, 1908, in the Western District of Washington, and within the jurisdiction of this court, being such officer and person acting as afore-

said, did then [12] and there deliver, and cause to be delivered to the said E. Silverstone a certain check signed by Robert H. Orr as Paymaster of the United States Navy Pay Office, Seattle, Washington, and drawn on the Seattle National, Seattle, Washington, a United States depositary, for the sum of Seven Thousand Four Hundred and Seventeen and 09/100 Dollars (\$7,417.09), payable to the order of the Fowler Metal Company, which said check was then and there in words and figures following, to wit:

	No. 82.	U. S. Navy Pay Office,
		Seattle, Washington, May 26th '08.
United States Depositary.	The Seattle National Bank, Seattle, Washington.	
State Object for which Drawn.	United States Depositary.	order
Zines. 1725.	Pay to Fowler Metal Co. or <del>bearer</del>	Seventy
	four hundred and seventeen 09/100 Dollars.	
	\$7417.09/00	ROBERT H. ORR,
		Paymaster, U. S. N.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Emar Goldberg, on or about the 1st day of June, 1908, in the Western District of Washington, and within the jurisdiction of this court, then and there had in his possession a certain obligation and security of the United States, to wit, a certain check drawn by an authorized officer of the United States, to wit, Robert H. Orr, as Paymaster of the United States Navy Pay Office, Seattle, Washington, upon the Seattle National Bank, Seattle, Washington, a United States depositary,

which said check was in words and figures following, to wit: [13]

	No. 82.	U. S. Navy Pay Office, Seattle, Washington, May 26th '08.
United States Depository.	The Seattle National Bank, Seattle, Washington.	United States Depository.
State Object for which Drawn.		order
Zincs. 1725.	Pay to Fowler Metal Co. or <del>bearer</del>	Seventy four hundred and seventeen 09/100 Dollars.
	\$7417.09/00	ROBERT H. ORR, Paymaster, U. S. N.

and the said Emar Goldberg so having said check in his possession at the time and place aforesaid, within the Western District of Washington, and within the jurisdiction of this court, did, with fraudulent intent, knowingly write and cause to be written upon the back of said check a certain endorsement of the following tenor, to wit:

“Pay to the order of E. Silverstone.

FOWLER METAL CO.

Pr. E. S. FOWLER,

Tres. & Mgr.”

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said Emar Goldberg, on or about the 1st day of June, 1908, in the Western District of Washington, and within the jurisdiction of this court, then and there had in his possession a certain obligation and security of the United States, to wit, a certain check drawn by an authorized officer of the United States, to wit, Robert H. Orr, as Pay-



master of the United States Navy Pay Office, Seattle, Washington, upon the Seattle National Bank, Seattle, Washington, a United States depository, which said check was in words and figures following, to wit: [14]

No. 82.	U. S. Navy Pay Office,
	Seattle, Washington, May 26th '08.
United States Depository.	The Seattle National Bank, Seattle, Washington.
State Object for which Drawn.	United States Depository.
Zincs. 1725.	order Pay to Fowler Metal Co. or <del>bearer</del> Seventy four hundred and seventeen 09/100 Dollars. \$7417.09/00
	ROBERT H. ORR, Paymaster, U. S. N.

and on the back of said check was the following:

“Pay to the order of E. Silverstone,  
FOWLER METAL CO.  
Pr. E. S. FOWLER,  
Tres. & Mgr.”

and the said Emar Goldberg so having said check in his possession at the time and place aforesaid, within the Western District of Washington, and within the jurisdiction of this court, with fraudulent intent, did knowingly deliver and cause to be delivered said check to one E. Silverstone.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said E. Silverstone, on or about the first day of June, 1908, in the Western District of Washington, and within the jurisdiction of this court, then and there had in his possession a certain

obligation and security of the United States, to wit, a certain check drawn by an authorized officer of the United States, to wit, Robert H. Orr, as Paymaster of the United States Navy Pay Office, Seattle, Washington, upon the Seattle National Bank, Seattle, Washington, a United States depository, which said check was in words and figures following, to wit: [15]

	No. 82.	U. S. Navy Pay Office,
		Seattle, Washington, May 26th '08.
United States	The Seattle National Bank, Seattle, Washington.	
Depository.		United States Depository.
State Object		order
for which		
Drawn.	Pay to Fowler Metal Co. or <del>bearer</del>	Seventy
Zincs. 1725.	four hundred and seventeen 09/100 Dollars.	
	\$7417.09/00	ROBERT H. ORR,
		Paymaster, U. S. N.

and the said E. Silverstone so having said check in his possession at the time and place aforesaid, within the Western District of Washington, and within the jurisdiction of this court, did write upon the back of said check a certain endorsement of the following tenor, to wit: "E. Silverstone."

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said E. Silverstone, on or about the first day of June, 1908, in the Western District of Washington, and within the jurisdiction of this court, then and there had in his possession a certain obligation and security of the United States, to wit, a certain check drawn by an authorized officer of the United

States, to wit, Robert H. Orr, as Paymaster of the United States Navy Pay Office, Seattle, Washington, upon the Seattle National Bank, Seattle, Washington, a United States depository, which said check was in words and figures following, to wit: [16]

No. 82.

U. S. Navy Pay Office,

Seattle, Washington, May 26th '08.

United States  
Depository.

The Seattle National Bank, Seattle, Washington.

United States Depository.

State Object  
for which  
Drawn.

order

Zines. 1725.

Pay to Fowler Metal Co. or ~~bearer~~ Seventy  
four hundred and seventeen 09/100 Dollars.

\$7417.09/00

ROBERT H. ORR,

Paymaster, U. S. N.

and the said E. Silverstone so having said check in his possession at the time and place aforesaid, within the Western District of Washington, and within the jurisdiction of this court, did deposit and cause to be deposited said check in the First National Bank of Seattle, Washington, for the credit of the said E. Silverstone.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said E. Silverstone, on or about the first day of June, 1908, in the Western District of Washington, and within the jurisdiction of this court, did issue and cause to be issued a check drawn on the First National Bank of Seattle, Washington, payable to the order of the Great Western Smelting and Refining Company, in the sum of Seven Thousand Four Hundred and Seventeen and 09/100 Dol-



lars (\$7417.09), and signed by himself and delivered, and caused to be delivered said check on said date to one Emar Goldberg.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to [17] effect the object of the same, one Emar Goldberg, on or about the 1st day of June, 1908, in the Western District of Washington, and within the jurisdiction of this court, then and there had in his possession a check issued and signed by E. Silverstone and drawn on the First National Bank of Seattle, Washington, payable to the order of the Great Western Smelting and Refining Company, in the sum of Seven Thousand Four Hundred and Seventeen and 09/100 Dollars (\$7417.09), and so having said check in his possession, did then and there endorse on the back of said check the name of the payee thereof, to wit: Great Western Smelting and Refining Company, and did then and there deposit said check to the credit of the Great Western Smelting and Refining Company in the National Bank of Commerce, Seattle, Washington; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

ELMER E. TODD,

United States Attorney.

CHARLES T. HUTSON,

Assistant United States Attorney.

Witnesses examined before grand jury:

Henry de F. Mel,	Ezra Fowler,
A. W. Barnes,	E. W. Brownell,
C. A. Philbrick,	L. H. Garrodd,
H. S. House,	George French. [18]
W. P. Showve,	

[Indorsed]: The United States vs. Edwin F. Meyer et al. Indictment for Vio. Section 5440 R. S. A True Bill. F. B. Hubbard, Foreman Grand Jury. Filed U. S. Circuit Court, Western District of Washington. May 31, 1911. Saml. D. Bridges, Clerk. Presented to the Court by the Foreman of the Grand Jury, in open court, in the presence of the Grand Jury, and filed in the U. S. Circuit Court May 31, 1911. Saml. D. Bridges, Clerk. Filed U. S. Circuit Court, Western District of Washington, Nov. 6, 1911. James C. Drake, Clerk. B. O. Wright, Deputy. [19]

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*In the Circuit Court of the United States for the  
Western District of Washington, Western Division,  
at Tacoma.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER et al.,

Defendants.

**Arraignment of Defendant Edwin F. Meyer.**

The defendant, Edwin F. Meyer, appearing in



open court at this time, in his own proper person for arraignment under the indictment heretofore returned against him, and said indictment having been duly read and explained to him, and being interrogated as to his name, he answered that his true name is as in the said indictment stated.

It is now ordered that this cause be and the same is hereby continued two weeks for plea.

Whereupon the defendant entered into the following recognizance, to wit:

[Indorsed]: Journal "F," page 511. [20]

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*In the United States Circuit Court for the Western  
District of Washington, Western Division.*

No. 1814.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER,

Defendant.

**Arraignment of Defendant Emar Goldberg.**

The defendant, Emar Goldberg, appearing in open court in his own proper person at this time, for arraignment under the indictment heretofore returned against him, and the said indictment having been read and explained to him, and being interrogated as to his true name, he answered that his true name is as in the said indictment stated. It is now ordered that the plea of the defendant, Emar Goldberg, be, and the same is hereby, continued four weeks.

Whereupon, the said defendant entered into the following recognizance in open court.

[Indorsed]: Journal "F," page 511. [21]

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No. 1814.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER et al.,

Defendants.

**Pleas of "Not Guilty" of Defendants Edwin F. Meyer and Emar Goldberg.**

The above-named defendant, Edwin F. Meyer, appearing in open court at this time, in his own proper person for plea to the indictment heretofore returned against him, and being interrogated as to his plea, he answered that he was not guilty as charged in said indictment.

The above-named defendant, Emar Goldberg, appearing in open court at this time in his own proper person, for plea to the indictment heretofore returned against him, and being interrogated as to his plea, he answered that he is not guilty as charged in said indictment.

Dated August 11, 1911.

[Indorsed]: Journal "F," page 534. [22]

*In the Circuit Court of the United States for the  
Western District of Washington, Southern Di-  
vision.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER, J. A. KETTLEWELL,  
EMAR GOLDBERG, W. A. COOPER and  
E. SILVERSTONE,

Defendants.

**Motion for Transfer of Cause.**

Come now the defendants in the above-entitled cause, Edwin F. Meyer appearing by his attorney, Andrew R. Black, Esq.; Emar Goldberg appearing by his attorneys, Messrs. Kerr & McCord; W. A. Corder appearing by his attorney, Charles A. Spirk, Esq.; and E. Silvertone appearing by his attorney, Charles H. Winders, Esq., and most respectfully represent and show the Court:

That the matters and things charged in the indictment in the above-entitled cause are alleged to have been committed within the counties of King and Kitsap in the State of Washington, or within the Northern Division of the Western District of said State; that all of the parties charged in said indictment are residents either of the County of King or the County of Kitsap, aforesaid, and that all or nearly all of the witnesses required in said cause are residents of one or the other of said counties, and that the convenience



of said parties and witnesses will be best subserved if the said cause is removed from the Southern to the Northern Division of said District.

Wherefore, by reason of the foregoing, the defendants move the Court for an order transferring and removing said cause from the Circuit Court of the United States for the Western District of Washington, Southern Division, sitting at Tacoma, to the said Circuit Court of the United States for the Northern Division of said District, sitting at Seattle. [23]

ANDREW R. BLACK,

Attorney for Edwin F. Meyer.

KERR & McCORD,

Attorneys for Emar Goldberg.

CHARLES A. SPIRK,

Attorney for W. A. Corder.

C. H. WINDERS,

Attorney for E. Silverstone.

[Indorsed]: Filed U. S. Circuit Court, Western District of Washington. Aug. 11, 1911. Saml. D. Bridges, Clerk. Filed U. S. Circuit Court, Western District of Washington. Nov. 6, 1911. James C. Drake, Clerk. B. O. Wright, Deputy. [24]



*In the Circuit Court of the United States for the  
Western District of Washington, Western Division,  
Ninth Judicial Circuit.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER et al.,

Defendants.

**Order [Transferring Cause to Northern Division of  
Circuit Court].**

On application of the defendants and by consent of the District Attorney, it is by the Court ordered that the above-entitled action be, and the same is hereby, transferred to the Northern Division of this court holding terms at Seattle.

Done in open court this 29th day of September,  
A. D. 1911.

FRANK H. RUDKIN,

Judge.

[Indorsed]: Order Filed U. S. Circuit Court,  
Western District of Washington. Sep. 29, 1911.  
Saml. D. Bridges, Clerk. Filed U. S. Circuit Court,  
Western District of Washington. Nov. 6, 1911.  
James C. Drake, Clerk. B. O. Wright, Deputy.  
[25]

*United States District Court for the Western District of Washington.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER et al.,

Defendants.

**Appearance [of Attorneys for Emar Goldberg].**

To the Clerk of the Above-entitled Court:

You will please enter our appearance as attorneys for Emar Goldberg in the above-entitled cause, and service of all subsequent papers, except writs and process, may be made upon said Kerr & McCord and Bert Schlesinger, by leaving the same with

BERT SCHLESINGER.

KERR & McCORD.

Office Address: 1309 Hoge Bldg.,

Seattle, Wash.

NOTICE: Attorneys Will Please Endorse Their  
Own Filings. Rule 11.

[Indorsed]: Appearance. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Oct. 24, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy. [26]

*United States District Court for the Western Dis-  
trict of Washington.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER, J. A. KETTLEWELL,  
EMAR GOLDBERG, W. A. CORDER, E.  
SILVERSTONE,

Defendants.

**Appearance [of Attorneys for Edwin F. Meyer].**

To the Clerk of the Above-entitled Court:

You will please enter our appearance as attorneys for Edwin F. Meyer in the above-entitled cause, and service of all subsequent papers, except writs and process, may be made upon said attorneys, by leaving the same with

MORRIS & SHIPLEY and  
ANDREW R. BLACK.

Office Address: Haller Block,  
Seattle, Wn.

NOTICE: Attorneys Will Please Endorse Their  
Own Filings. Rule 11.

[Indorsed]: Appearance. Filed in the U. S. Dis-  
trict Court, Western Dist. of Washington, Northern  
Division. Oct. 27, 1913. Frank L. Crosby, Clerk.  
By E. M. L., Deputy. [27]

*In the District Court of the United States for the  
Western District of Washington.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER, EMAR GOLDBERG and W.  
A. CORDER et al.,

Defendants.

**Verdict.**

We, the jury in the above-entitled cause, find the  
defendant Edwin F. Meyer is guilty.

ADOLF WATSON,

Foreman.

[Indorsed]: Verdict. Filed in the U. S. District  
Court, Western Dist. of Washington, Northern Divi-  
sion. Nov. 12, 1913. Frank L. Crosby, Clerk. By  
E. M. L., Deputy. [28]

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*In the District Court of the United States for the  
Western District of Washington.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER, EMAR GOLDBERG and W.  
A. CORDER et al.,

Defendants.



**Verdict.**

We, the jury in the above-entitled cause, find the defendant Emar Goldberg is guilty.

ADOLF WATSON,

Foreman.

[Indorsed]: Verdict. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Nov. 12, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy. [29]

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*In the District Court of the United States for the  
Western District of Washington, Northern Division.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER et al.,

Defendants.

**Order Fixing Bond of Defendants.**

Now, on this day, it is ordered by the Court that bonds for Defendants Edwin F. Meyer and Emar Goldberg be, and they are hereby, fixed at \$5,000.00 for each defendant, and they are allowed until Thursday, November 13, 1913, to furnish same, and allowed to remain at liberty until that time, their counsel, James A. Kerr and Silas M. Shipley, agreeing to be responsible for said defendants and to have them in court at that time.

Dated November 12, 1913.

Journal 3, page 323. [30]

*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

No. 2039.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER and EMAR GOLDBERG,

Defendants.

**Order [Extending Time to December 22, 1913, to  
File Proposed Bill of Exceptions].**

The above-entitled cause coming on to be heard on the application of the defendants, Edwin F. Meyer and Emar Goldberg, for an extension of time within which to prepare and file in this court the defendants' Bill of Exceptions, Messrs. Morris & Shipley appearing for the defendant, Edwin F. Meyer and Bert Schlesinger and Kerr & McCord, appearing for the defendant Emar Goldberg, and Clay Allen, Esq., United States District Attorney, appearing for the United States of America, after hearing the arguments of counsel and being well and sufficiently advised in the premises, the Court does hereby

Order and direct that the defendants do have 30 days from this 22d day of November, 1913, within which to prepare and file in this court, their proposed Bill of Exceptions.

Done in open court this 22d day of November,  
A. D. 1913.

EDWARD E. CUSHMAN,

Judge. 1

[Indorsed]: Order. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Nov. 22, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputv. [31]

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*In the District Court of the United States, in and for  
the Western District of Washington.*

No. 2039.

UNITED STATES OF AMERICA,

vs.

EMAR GOLDBERG, EDWIN F. MEYER et al.,  
Defendants.

**Motion to Arrest Judgment.**

The defendants, Emar Goldberg and Edwin F. Meyer, in the above-entitled cause, before judgment, respectfully move the Court that for error appearing on the face of the indictment and upon the face of the record, that judgment for the United States of America, be arrested and withheld, and conviction herein rendered be declared null and void.

Said motion is based on the following grounds:

(1) That the indictment herein fails to charge the offense of conspiracy to defraud the United States.

(2) That the indictment does not state facts sufficient to constitute a public offense against the laws of the United States.

(3) That the indictment fails to charge any offense against the laws of the United States. [32]

(4) That the indictment fails to charge a combination or conspiracy to violate any law of the United States.



(5) That the indictment fails to set forth any act in violation of Section 5440 of the Revised Statutes of the United States committed within three years prior to the filing thereof.

(6) That the indictment affirmatively shows that the alleged violation of Section 5440 of the Revised Statutes was committed and completed on the 26th day of May, 1908, and said indictment was not presented until the 31st day of May, 1911.

(7) That the indictment shows that the last overt act to effect the object of the alleged conspiracy was committed on the 26th day of May, 1908, or prior thereto.

(8) That the indictment shows that no overt act occurred within three years of the finding of the indictment herein.

(9) That the indictment shows upon its face that the alleged offense was barred by Section 1044 of the Revised Statutes of the United States.

(10) That the said indictment was and is void under Section 1044 of the Revised Statutes of the United States.

(11) That the said indictment was found contrary to Section 1044 of the Revised Statutes of the United States.

(12) That the said indictment was not found within three years next after said alleged offense was committed. [33]

(13) That said indictment shows upon its face that the alleged offense was completed on the 26th day of May, 1908, when the check set out in said indictment was actually issued.

(14) That said indictment fails to set forth any overt act as required by Section 5440 of the Revised Statutes.

(15) That said indictment is void in this that the time of said conspiracy is laid as on or about the 2d day of June, 1908, and the alleged overt acts therein set forth are alleged to have occurred prior to that date.

WHEREFORE, for error appearing on the face of the indictment and upon the face of the record the defendants pray that the judgment upon the verdict be arrested and withheld and conviction herein declared to be null and void.

Dated November 29th, 1913.

BERT SCHLESINGER,  
KERR & McCORD,  
MORRIS & SHIPLEY,  
ANDREW R. BLACK,

Attorneys for Defendants Emar Goldberg and Edwin F. Meyer.

Due service and receipt of a copy of the within Motion is hereby admitted this 29th day of Nov., 1913.

CLAY ALLEN,  
For Pltf.

[Indorsed]: Motion to Arrest Judgment. Filed in the U. S. District Court, Western Dist. of Washington. Nov. 29, 1913. Frank L. Crosby. By E. M. Lakin, Deputy. [34]

**[[Order Overruling Motion in Arrest of Judgment  
and Denying Motion for New Trial.]**

*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER et al.,

Defendants.

**Hearing.**

This matter coming on to be heard upon the de-  
fendants' motion in arrest of judgment and motion  
for new trial, and statement of defendants' counsel,  
and the Court being fully advised, overruled motion  
in arrest of judgment and denied motion for new  
trial. Exception is allowed on each motion.

Dated November 29, 1913.

Journal 3, page 337. [35]

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*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER and EMAR GOLDBERG,

Defendants.



**Sentence of Emar Goldberg.**

Comes now on this 29th day of November, 1913, the said defendant Emar Goldberg, into open court for sentence, and being informed by the Court of the indictment herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, he nothing says save as he before hath said.

Wherefore, by reason of the law and the premises, it is considered by the Court, that the said defendant, Emar Goldberg, be punished by being imprisoned in the United States Penitentiary at McNeil Island, Pierce County, Washington, or in such other place as may be hereafter provided for the imprisonment of offenders against the laws of the United States, for the term of fifteen months, at hard labor, from and after this date. And that he pay a fine of Two Thousand Dollars, and that he be further imprisoned in the said United States Penitentiary until such fine is paid or until he shall be otherwise discharged by due process of law.

And the said defendant Emar Goldberg is now hereby ordered into the custody of the United States Marshal to carry this sentence into execution.

Dated November 29, 1913.

[Indorsed]: Judgments and Decrees, 1, page 385.

*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER et al.,

Defendants.

**Sentence of Edwin F. Meyer.**

Comes now on this 29th day of November, 1913, the said defendant Edwin F. Meyer, into open court for sentence, and being informed by the Court of the indictment herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, he nothing says save as he before hath said.

Wherefore, by reason of the law and the premises, it is considered by the Court, that the said defendant Edwin F. Meyer be punished by being imprisoned in the United States Penitentiary at McNeil Island, Pierce County, Washington, or in such other place as may be hereafter provided for the imprisonment of offenders against the laws of the United States, for the term of fifteen months, at hard labor, from and after this date. And that he pay a fine of Two Thousand Dollars, and that he be further imprisoned in the said United States Penitentiary until such fine is paid, or until he shall be otherwise discharged by due process of law.

And the said defendant, Edwin F. Meyer, is now hereby ordered into the custody of the United States Marshal to carry this sentence into execution.

Dated November 29, 1913.

[Indorsed]: Judgments and Decrees, 1, page 385.  
[37]

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*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER and EMAR GOLDBERG,

Defendants.

**Order Extending Time to [January 21, 1914, to] File  
Bill of Exceptions.**

This cause coming on to be heard this 17th day of December, A. D. 1913, upon the application of the attorneys for the defendants above named, for an extension of time within which to prepare, serve and file their bill of exceptions, Bert Schlesinger and Messrs. Kerr & McCord and Messrs. Morris & Shipley, appearing as attorneys for the defendants, and Clay Allen, Esq., United States District Attorney, appearing for the plaintiff and consenting to said application for additional time.

It is now by the Court ordered that the time within which to prepare, serve and file the defendants' bill of exceptions heretofore fixed by the Court



at thirty days from November 22, 1913, be and the same is hereby extended for an additional thirty days, or at sixty days from November 22, 1913.

JEREMIAH NETERER,  
Judge.

O. K.—CLAY ALLEN,  
Atty. for Pltf.

[Indorsed]: Order Extending Time. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Dec. 17, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy. [38]

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*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

No. 2039.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

EMAR GOLDBERG, EDWIN F. MEYER et al.,  
Defendants.

**Order [Extending Time to February 20, 1914, to File  
Bill of Exceptions].**

This cause coming on to be heard upon the application of the defendants for a further extension of time within which to prepare, serve and file their bill of exceptions on the appeal of the above-entitled cause, Clay Allen, Esq., United States District Attorney, appearing for the plaintiff, and Messrs. Morris & Shipley, Bert Schlesinger, Esq., and Messrs.

Kerr & McCord appearing for the defendants, it is now by the Court

Ordered, that the time within which the defendants may prepare, serve and file their bill of exceptions in the above-entitled cause be, and the same is, hereby extended for an additional period of thirty days, the time for filing said bill of exceptions having been heretofore extended by order of this Court for a period of sixty days.

JEREMIAH NETERER,  
Judge.

[Indorsed]: Order. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 5, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [39]

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**[Admission of Service of Proposed Bill of  
Exceptions.]**

*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

No. 2039.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

EDWIN F. MEYER, J. A. KETTLEWELL, EMAR  
GOLDBERG, W. A. CORDER, and E. SIL-  
VERSTONE,

Defendants.

Due service and receipt of a copy of Proposed Bill of Exceptions on behalf of defendants, Edwin F. Meyer and Emar Goldberg, numbered Vol. 1, pages 1 to 147, inclusive, Vol. 2, pages 148 to 294, inclusive, Vol. 3, pages 295 to 452, inclusive, Vol. 4, pages 453 to 646, inclusive, Vol. 5, pages 647 to 786, inclusive, Vol. 6, pages 787 to 945, inclusive, Vol. 7, pages 946 to 1100, inclusive, and Vol. 8, pages 1101 to 1255, inclusive, is hereby admitted this 27th day of January, 1914.

CLAY ALLEN,  
United States Attorney.

[Indorsed]: Admission of Service of Proposed Bill of Exceptions on Behalf of Defendants Meyer and Goldberg. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 27, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [40]

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**[Stipulation Waiving Printing of All Exhibits and  
for Transmission of Original Exhibits to Appel-  
late Court.]**

*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

No. 2039.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.



EDWIN F. MEYER, J. A. KETTLEWELL, EMAR  
GOLDBERG, W. A. CORDER and E. SIL-  
VERSTONE,

Defendants.

It is hereby stipulated and agreed that it shall not be necessary to print in the Bill of Exceptions nor in the transcript on appeal in the above-entitled cause all the exhibits introduced in evidence by the Government in said cause numbered 1 to 87, inclusive, and 29-A, 29-B and 3-A, and all the exhibits introduced in evidence in said cause by said defendants and numbered A to X, inclusive, XX, Y, Z and A-1 to A-109, inclusive, but that the Clerk of the above-entitled Court may annex the originals of said exhibits to said transcript on appeal and the same may be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit and may be used on the hearing of said appeal with the same force and effect as though the same were inserted *verbatim* in said Bill of Exceptions and in said transcript on appeal.

The intent of this stipulation is that all of the exhibits on the part of the Government and the said defendants need not be printed, but shall be annexed by the Clerk to the transcript on appeal and transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

Dated January 27, 1914.

CLAY ALLEN,  
United States Attorney.  
MORRIS & SHIPLEY, and  
ANDREW R. BLACK,  
Attorneys for Defendant, Edwin F. Meyer.  
KERR & McCORD,  
BERT SCHLESINGER,  
Attorneys for Deft. Emar Goldberg. [41]

[Indorsed]: Stipulation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 27, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [42]

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*In the District Court of the United States for the  
Western District of Washington, Northern Division.*

No. 2039.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

EDWIN F. MEYER, J. A. KETTLEWELL, EMAR  
GOLDBERG, W. A. CORDER and E. SIL-  
VERSTONE,

Defendants.

**Order [Directing Transmission of Original Exhibits  
to Appellate Court, etc.]**

It appearing from the stipulation entered into between the United States attorney and the attorneys for the defendants, Edwin F. Meyer and Emar Gold-

berg, on file herein, that all the exhibits introduced in evidence by the Government in the above-entitled cause and numbered 1 to 87, inclusive, and 29-A, 29-B, and 3-A, and the exhibits introduced in evidence in said cause by said defendants and numbered A to X, inclusive, XX, Y, Z and A-1 to A-109, inclusive, need not be printed, but that the Clerk of this Court may attach the originals of said exhibits to the Transcript on Appeal in said cause to be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit to be used on the hearing of said appeal. On motion of the attorneys for said defendants and good cause appearing therefor;

It is ordered that the Clerk of this Court annex the originals of all exhibits to the transcript on appeal and transmit the same to the United States Circuit Court of Appeals for the Ninth Circuit in San Francisco, State of California, to be used on the hearing of said appeal with the same force and effect as though said exhibits were inserted *verbatim* in said Transcript on Appeal.

Dated January 27, 1914.

JEREMIAH NETERER,

Judge of the District Court of the United States, in  
and for the Western District of Washington,  
Northern Division.

O.K.—CLAY ALLEN,

District Atty. [43]

[Indorsed]: Order. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jan. 27, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [44]



*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER and EMAR GOLDBERG,

Defendants.

**Stipulation [for Omission from Bill of Exceptions of  
Exhibits not Introduced in Evidence, etc.].**

Whereas, it appears that certain of the exhibits mentioned in the stipulation of the parties hereto, and the order of the Court, both dated and filed on the 27th day of January, 1914, were not introduced in evidence, and certain others were withdrawn before the submission of the case to the jury;

It is stipulated by the parties hereto, by their respective attorneys, that the exhibits which shall be attached to the bill of exceptions herein, and transmitted to the Circuit Court of Appeals, shall be all the exhibits introduced in evidence and submitted to the jury and now in the custody of the clerk, but that it shall not be necessary to attach to the bill of exceptions or transmit to the Circuit Court of Appeals any exhibit which was not introduced in evidence and submitted to the jury.

Dated this —— day of April, 1914.

CLAY ALLEN,  
U. S. District Attorney.  
MORRIS & SHIPLEY, and  
ANDREW R. BLACK,  
BERT SCHLESINGER, and  
KERR & McCORD,  
Attorneys for Defendants.

[Indorsed]: Stipulation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Apr. 11, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [44A]

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*In the District Court of the United States for the  
Western District of Washington, Northern Division.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER and EMAR GOLDBERG,  
Defendants.

**Order [for Omission from Bill of Exceptions of  
Exhibits not Introduced in Evidence, etc.].**

It appearing to the Court that certain of the exhibits mentioned in the order of the Court herein, dated and filed on January 27, 1914, were not introduced in evidence, and certain others were withdrawn before the submission of the case to the jury,

and the Court having read the stipulation of the parties hereto;

It is hereby ordered that the exhibits which shall be attached to the bill of exceptions herein, and transmitted to the Circuit Court of Appeals shall be all the exhibits introduced in evidence and submitted to the jury and now in the custody of the clerk, but that it shall not be necessary to attach to the bill of exceptions or transmit to the Circuit Court of Appeals, any exhibit which was not introduced in evidence and submitted to the jury.

Done in open court this 11th day of April, 1914.

JEREMIAH NETERER,

Judge.

O. K.—ALLEN,

District Atty.

[Indorsed]: Order. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Apr. 11, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [44B]

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*In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision.*

No. 2039.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER and EMAR GOLDBERG,  
Defendants.



**Stipulation [Extending Time for Settlement of Bill of Exceptions, etc.].**

It is stipulated and agreed between the above-named parties by their respective attorneys as follows:

That the original proposed bill of exceptions heretofore served by plaintiff upon the United States Attorney in this cause, which has been delivered to the Clerk of said Court, may be held by the Clerk and not submitted to the Judge for settlement for the period of 15 days, in order to enable said United States Attorney to have additional time for examination thereof, and that the time for the settlement and filing thereof be extended for such purpose.

It is further stipulated that the petition for writ of error on behalf of defendants and the assignments of error prepared by defendants for filing in said cause shall be withheld and may be filed at any time after the settlement of said proposed bill of exceptions within the period allowed by statute for the suing out of writs of error, it being the intention of this stipulation that said petition for writ of error and assignments of error be filed immediately following the settlement and filing of the bill of exceptions as above stipulated.

Dated February 11, 1914.

CLAY ALLEN,  
Attorney for Plaintiff. [45]  
BERT SCHLESINGER and  
JAMES A. KERR,  
MORRIS & SHIPLEY and  
ANDREW R. BLACK,  
Attorneys for Defendants.

[Indorsed]: Stipulation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Feb. 11, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [46]

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*In the District Court of the United States for the  
Western District of Washington, Northern Division.*

No. 2039.

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.

EDWIN F. MEYER and EMAR GOLDBERG,  
Defendants.

**Order [Allowing Plaintiff Until March 10, 1914, to  
File Amendments to Bill of Exceptions].**

Upon the oral motion of the United States Attorney, it appearing that a stipulation has been entered into between the attorneys for the plaintiff and defendants in the above-entitled cause, to the effect that the plaintiff herein may be given until March 10, 1914, within which to propose and file

any proposed amendments to the Bill of Exceptions filed herein; it is hereby ordered that the plaintiff may have until March 10, 1914, within which to propose and file any proposed amendments to the Bill of Exceptions filed herein.

Dated this 25th day of February, 1914.

JEREMIAH NETERER,

Judge.

[Indorsed]: Order. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Feb. 25, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [47]

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*In the District Court of the United States, in and for  
the Western District of Washington, Northern  
Division.*

No. 2039.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

EDWIN F. MEYER, J. A. KETTLEWELL, EMAR  
GOLDBERG, W. A. CORDER and E. SIL-  
VERSTONE,

Defendants.

**Bill of Exceptions on Behalf of Edwin F. Meyer and  
Emar Goldberg.**

BE IT REMEMBERED, that heretofore, the Grand Jury of the United States, in and for the Western District of Washington, did find and return in, to and before the above-entitled court its indictment against the defendants, Edwin F. Meyer and



Emar Goldberg, and thereafter the said Edwin F. Meyer and Emar Goldberg appeared in said court, and upon being called to plead to said indictment, entered their plea of not guilty.

AND BE IT FURTHER REMEMBERED, that the said defendants having duly pleaded not guilty, as shown by the record herein, and the cause being at issue, the same came on for trial before the Honorable Jeremiah Neterer, District Judge of said Court, and a jury duly impaneled, the United States being represented by Clay Allen, Esq., United States District Attorney, and Charles F. [48\*—1†] Riddell, Esq., Special Prosecutor, and the defendant, Edwin F. Meyer, being represented by Morris & Shipley and Andrew R. Black, Esq., and the defendant, Emar Goldberg, being represented by James A. Kerr, Esq., and Bert Schlesinger, Esq., the following proceedings were had:

The United States Attorney made an opening statement of the case to the jury. The plaintiff to maintain the issues, on its part to be maintained, introduced and offered in evidence the following testimony, to wit:

**[Testimony of Ray Spear, for Plaintiff.]**

RAY SPEAR, produced as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

**Direct Examination.**

My name is Ray Spear. I am a paymaster in the

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\*Page-number appearing at foot of page of certified Transcript of Record.

†Original page-number appearing at foot of page of Bill of Exceptions as same appears in Certified Transcript of Record.

(Testimony of Ray Spear.)

United States Navy. My rank is Lieutenant-Commander. I reside and am stationed on duty, at present, at Norfolk, Virginia. From the 2d day of January, 1908, until about the middle of August, 1910, I was on duty at the Bremerton Navy Yard, Bremerton, Washington. My principal duty was general storekeeper. I recognized that as being the position I filled, but I had numerous other duties from time to time.

The duties of a general storekeeper at a Navy Yard has to do with the custody of all material and supplies received on the yard and issued from the yard; that is for manufacturing purposes in the yard and to vessels that may come there to the yard.

We have a regular published volume called, "Articles for the Government in the United States Navy and Naval Regulations" that comes out in bound form about every five years, or such time as the Secretary of the Navy may direct it to be republished [49—2] and such corrections as he may see fit. This is the regulation for the Government of the United States Navy for 1909. It has since been superseded by new regulations. The regulations of 1905 were in effect in 1908, but there may be minor changes between the regulations as existed in 1909 and those which existed in 1908.

Mr. VANDERVEER.—Objection to that as not material.

The COURT.—He may answer the question. Exception.

A. (Witness continuing.) There may be minor

(Testimony of Ray Spear.)

changes, but in the main they are just the same.

Mr. ALLEN.—Mark it for identification, if you please.

(Book referred to marked Plaintiff's Exhibit 1 for identification.)

Q. I will ask you, Mr. Spear, whether or not this Navy Blue Book—is that what you call it?

A. Well, we call it the Bible. Well, this Bible of the Navy, whether or not that offers anything more than simply general instructions which cover the duties of officers generally?

Mr. SCHLESINGER.—One moment. To that we certainly object on the ground that the book speaks for itself and is the very best evidence of its own contents, and the question calls for the opinion or understanding of the witness, and is not competent for that reason.

The COURT.—The witness may state what construction is placed upon these provisions and what is done under them.

Mr. SCHLESINGER.—Note an exception.

A. The instructions in the Naval Regulations are merely general and are supplemental from time to time by general orders that are issued weekly and monthly and from time to time as the secretary directs.

Mr. ALLEN.—And they would be no part of this particular Blue Book, [50—3] this Bible of the Navy?

A. Well, they have to be taken in connection with that Blue Book.



(Testimony of Ray Spear.)

Q. But I mean to say they are not included in that book?

A. No, sir. We keep a separate file of them.

Q. When you came to your post at Bremerton, state to the jury just what employees you found there in the United States employ in the Storekeeper's Office there.

A. Well, first I found Mr. Meyer, who had—

Q. What was his position?

A. Of Principal Clerk and acting as Chief Clerk of my office.

Q. Who else was in there, Mr. Spear, that you remember of?

A. We had Mr. Ames, as I remember, was the bookkeeper, and Mr. Holt, and Mr. Tichenor, and Mr. Lewis in the office proper—we had two Lockwood brothers were storemen in the storehouse.

Q. Which one of the Lockwoods, if either, was in charge of the metal storehouse there?

A. I believe it is George Lockwood, sir.

Q. He was in the employ of the Navy Department at that time during the beginning of 1908 down until the time you left the navy yard? A. Yes, sir.

Q. As a matter of fact, he is still in the employ of the navy in the same position, is he not?

A. I believe so.

Q. I believe you mentioned Mr. Tichenor and Mr. Holt. Mr. McNeil, was he with you at that time?

A. I don't remember whether Mr. McNeil was there when I reported for duty or not; he came there during my time at least.

(Testimony of Ray Spear.)

Q. You remember a man by the name of Dannan?

A. Yes, sir. [51—4]

Q. You remember, of course, both the Lockwoods?

A. Yes, sir.

Q. When did Mr. Barnes come on the job?

A. It was in the late summer or early fall of 1908, sometime after the battleship fleet left. I don't know the exact date.

Q. As Principal Clerk of your office while you were Paymaster in charge, state to the jury the duties of Mr. Meyer, the Principal Clerk.

Mr. VANDERVEER.—This is a matter presumably to be covered by the printed regulations, and the regulations themselves are the best evidence. And while I am on my feet, it has been agreed by all of counsel for the defendants that any objection made by any one of them will be considered as general unless specifically restricted, considered as as made by all, in other words, to avoid confusion.

The COURT.—He may answer.

Mr. VANDERVEER.—Note an exception.

Q. As a matter of fact, Mr. Spear, does the Naval Blue Book make any reference to the duty of Principal Clerk, except probably to define the fact as to who shall appoint him and matters of that kind?

A. Well, there is a supplementary regulation covering general storekeeping departments of the navy which has been approved by the Secretary of the Navy, which, in the main, governs the duties of Chief Clerk in the Storekeeper's Office.

Q. But his duty—

(Testimony of Ray Spear.)

A. His duty is whatever duty the General Storekeeper assigns him.

Q. He is directly under your orders, and obeys such instructions as you may give him and do such work you may direct him to do? A. Yes.

Q. What were his duties, then, under your direction while he was your principal clerk with reference to the sending out of requisitions [52—5] from your office?

Mr. SCHLESINGER.—Now, if your Honor please, this is certainly a vital part of his indictment, and if these duties are prescribed by the chief official of the Navy Department and appear either in a printed or written book known as a book of rules or regulations, this jury is entitled to have that book, and the book would be the best and only evidence, and not the understanding of the witness upon the stand. On that ground we object to that again.

The COURT.—I understand from the testimony of the witness the duties are not prescribed by any regulations of any kind; that is, the duties of his profession were defined by a supplemental order to this book, but the duties of the clerk were not defined, but were under the direction of the person occupying his position.

Mr. SCHLESINGER.—I didn't understand that.

The COURT.—Let the witness state again or repeat.

A. The duties of the chief clerk have been outlined as the approved system of organization in this book, but it is not necessarily confined to that, to



(Testimony of Ray Spear.)

those instructions. There is a great deal of discretion left with the general storekeeper what he should do.

Mr. SCHLESINGER.—That is the very point.

The COURT.—Finish the answer.

The WITNESS.—I think I finished, sir.

The COURT.—I think that the supplemental order should be here, if there is one.

Mr. ALLEN.—Can you obtain, Mr. Spear, for the Court a copy of any supplemental order that would cover the movements or actions of the Principal Clerk in your office at that time?

A. I don't know whether it would be referred to as Principal Clerk; it would be referred to as Chief Clerk probably in the instruction [53—6] book. Undoubtedly that book exists over to the navy yard.

Mr. ALLEN.—I will ask you as to the actual fact in the operation of the Army and Navy of the United States, as to whether or not a book of directions, general in character and general in tone, which suggests the operation of any particular branch of the service, isn't within the control and direction of the officers charged with the responsibility of controlling that? A. Yes, sir.

Q. Mr. Spear, state to the Court and jury what duties did he perform there in your office.

Mr. SCHLESINGER.—Just a minute. Your Honor please, so as to be consistent, we object to that question upon the ground that the printed rules or regulations would be the best and only evidence, and the question calls for an understanding of the

(Testimony of Ray Spear.)

witness, and hence is not competent nor binding upon any one of these defendants. We have a book of instructions; the book ought to be produced.

The COURT.—He may answer what duties.

Mr. SCHLESINGER.—Exception.

The COURT.— —his clerk, whatever he performed under these instructions or supplemental orders, with the understanding the supplemental order will be supplied later.

A. He was acting as chief clerk of my office and chief of the requisition section, the stock upkeep section, that is.

Mr. ALLEN.—What were his duties as chief clerk and requisition clerk?

Mr. SCHLESINGER.—Your Honor, may this go in under our general objection subject to our running exception?

The COURT.—Yes. [54—7]

A. (Continuing.) He had general charge of the mail, papers that passed through the office, such as any chief clerk in a large office would have; the routing of this correspondence to the different desks. They were his principal duties as chief clerk. He had also considerable correspondence, that is, original correspondence, to handle, and, as chief and head of the requisition section, he had general charge of the storemen out in the storehouses, the quantity and amounts of material that was on hand, and he could originate a requisition himself, that is, subject to whatever instructions I desired to give him, any item that was short in stock.

(Testimony of Ray Spear.)

Q. What were his duties with reference to the preparation of requisitions to supply deficiencies, or alleged deficiencies, in stock for material that might be on hand?

A. He was supposed to acquaint himself with the quantity or item of that particular article to be called for on hand at the time, and ascertain the prevailing price or the prices that they had paid for similar articles in the past. Also to judge the quantities that had been issued in the past, and then make his requisition accordingly.

Q. From what source would he obtain information with reference to the price, or estimated price, to be fixed by him in the requisition?

A. Why, it was customary to take previous purchases and prepare prices, strike the general average of that.

Q. Was the source and procedure in your office such that all requisitions and matters of that kind came from Mr. Meyer?

Mr. VANDERVEER.—Object, if the Court please, on the ground the question is leading, and upon the ground also it is immaterial what the practice of the office was at any given time. [55—8]

Mr. SCHLESINGER.—We supplement the objection, if the Court please, on the further ground that the practice is controlled by printed rules and regulations and, therefore, those would be the best evidence as to what the practices of the office are or were.

Mr. ALLEN.—He has already stated the duties



(Testimony of Ray Spear.)

this man was performing.

The COURT.—The objection is overruled. Exception.

Mr. ALLEN.—Read the question.

Q. (Question repeated.)

A. It was.

Q. I call your attention to this memorandum, this sheet, which I hold in my hand, and ask you to identify that memorandum, if you can do so.

Mr. VANDERVEER.—Is there any objection, your Honor, to the stenographer noting an exception to each of your Honor's rulings?

The COURT.—No, I understood that.

Mr. VANDERVEER.—I mean without our requesting an exception and having it allowed.

The COURT.—Yes.

Mr. VANDERVEER.—We make our objection, your Honor rules, and then we request an exception or your Honor allows it. That wastes a lot of time. The stenographer could show the exception.

The COURT.—I don't know that I would like to make that general throughout the entire trial with relation to this testimony. It may be so noted with an exception, an objection and—

Mr. VANDERVEER.—I don't mean to have him note any objection except where we urge it, but when your Honor overrules our objection the stenographer could note the exception without our requesting it each time.

The COURT.—Yes. [56—9]

Mr. SCHLESINGER.—Mr. District Attorney, I

(Testimony of Ray Spear.)

suggest there is an entire chapter here on requisitions and also on chief clerks. I shall want that book in evidence.

Mr. ALLEN.—State to the Court and jury what that memorandum is, if you can identify it.

A. This paper which I hold in my hand is a sheet taken from the old stock ledger books which was at the navy yard in 1908. They have since been superseded by a different method of accounting, but this is the only itemized account of items kept in the main office at the time. We had stock cards in addition to these out in the storehouses.

Q. I believe you had stated it was the duty of Mr. Meyer, the Principal Clerk, to familiarize himself with prices as they have gone before or by purchases of material made in the yard, is that true?

A. Yes.

Mr. ALLEN.—I now offer in evidence, your Honor, the general stock memorandum—

Mr. MORRIS.—Will you let us see that?

Mr. ALLEN.—This is a memorandum which shows the purchase, or purports to show—

Mr. SCHLESINGER.—Which part do you offer?

Mr. ALLEN.—The first page is offered.

Mr. SCHLESINGER.—We have no objection to this, Mr. District Attorney.

Mr. ALLEN.—We offer this in evidence.

The COURT.—Admitted.

(Paper referred to received in evidence and marked Plaintiff's Exhibit No. 2.)

Mr. SCHLESINGER.—Of course, you only claim

(Testimony of Ray Spear.)

that relates to four [57—10] selected transactions?

Mr. ALLEN.—No, sir, not selected—I will ask Mr. Spear what four purchases, referring to that for your information, what four purchases, if that is taken from your ledger, would this show? Would that show selected purchases, or the last four, or some made five years ago, or what?

A. Would show the last four receipts, which would be the last four increases of stock. Whether they are all from purchases or not, I can't tell.

Q. The last four receipts of zinc plate of size  $1\frac{1}{2}$  inch by 6 by 12, is that right, as well as 12 by 36?

A. Yes, sir.

Mr. MORRIS.—Mr. Allen, may I ask the witness a question?

Q. Mr. Spear, can you tell from what record that paper is taken?

Mr. ALLEN.—He has already identified it.

Mr. MORRIS.—I ask permission of the Court to ask this witness a question. I have submitted the question and I would like to have an answer.

The COURT.—Read the question.

Q. (Question repeated.)

A. I have every reason to believe it is a sheet taken from our stock ledger book at Bremerton.

Mr. MORRIS.—I want to get from Mr. Spear, if I can, information that will allow us to trace this back to its original source, that is what we are after.

Mr. MORRIS.—Does that come from the invoices and Inspection Calls?



(Testimony of Ray Spear.)

A. Well, it depends on whether it is receipt or expenditure. The entire sheet is our ledger account; it is a ledger account of our items over there. [58—11]

Mr. MORRIS.—From the Inspection Call?

A. Yes, taken from various—any source; it might come from a receipted invoice from another yard, might come from purchase or contracts.

Mr. MORRIS.—Do you know where it did come from?

A. The individual items?

The COURT.—The sheet?

A. I could trace the sheet there, yes, from the record.

Mr. MORRIS.—And the sheet is taken from what place, from what record in the Storekeeper's Office?

A. In the bookkeeping section of the Storekeeper's Office.

Mr. MORRIS.—It comes from the Storekeeper's Office? A. Apparently it does.

Mr. ALLEN.—Explain to the jury the hieroglyphics or figures as you may find them on the left-hand side of that exhibit, Plaintiff's Exhibit 2.

A. Shows here on the 12th day of March, 1908, on requisition or contract 8318, which was apparently sent to the Bureau of Steam Engineering, the hieroglyphics "S. E." mean "Steam Engineering."

A. The initials "S. E." stand for "Steam Engineering," and passed on Inspection Call 1916, a certain quantity of zinc plates 12 by 16, a quantity of 50,158 pounds at .0713 cents per pound.

(Testimony of Ray Spear.)

Q. What does that indicate, now, as regards the arrival or not of material at the yard in that quantity and in that amount?

A. It would be conclusive evidence that amount had been at least passed on the Inspection Call or received on the yard.

Q. That is on what date, March what?

A. On March 12th it would appear that 50,158 pounds had passed inspection on that date, been received.

Q. The date, then, is March 12, 1908? [59—12]

A. Yes, sir.

Q. And the price is \$7.13 a hundred. The second, what does that indicate, the amount of purchase and date?

A. The second item here is, on the 25th of March, 1908, on Requisition 348, also approved by the Bureau of Steam Engineering, there was passed on Inspection Call 2067, 24 by 36 inch plates at 12½ cents a pound.

Q. Also indicate what the third item means?

A. That on the 18th day of April, 1908, on Requisition 304, which, however, was approved by the Bureau of Construction and Repair—the letters “C. R.” stand for “Construction and Repair.”

Mr. SCHLESINGER.—Approved by whom?

A. Construction and Repair; at least passed on by that Bureau, and was delivered at the yard—

Mr. SCHLESINGER.—Is that the Bureau at Washington?

A. Yes, sir. And passed on Inspection Call 2335,

(Testimony of Ray Spear.)

24 by 36 inch plates at .1109 cents a pound.

Mr. MORRIS.—That is the third item?

A. That is the third item.

Mr. ALLEN.—What does the fourth item on that sheet show?

A. On the 18th of May, 1908, on Requisition 438, passed on by the Bureau of Steam Engineering, there was delivered at the yard on Inspection 2061, 6 by 12 inch plates, quantity 59,575 pounds at \$12.45.

Q. What is the aggregate amount?

A. The aggregate amount is 59,575.

Q. What is the aggregate sum paid?

A. \$7,417.09.

Q. Mr. Spear, I call your attention to this folder which I hold [60—13] in my hand and ask you to identify it, if you are able to do so.

The COURT.—Let it be marked identification number “3.”

(Paper referred to marked Plaintiff's Exhibit Number 3 for identification.)

Mr. ALLEN.—Mr. Spear, you have examined this folder, have you which I have just presented to you? After your examination, state, if you are able to do so, what that folder is.

A. This is a folder that was in use over in my office, that is, the form was in use, and is used to file the copies of the contracts that we get from the Bureau of Supplies and Accounts covering the material delivered at the yard. Papers and correspondence and everything relating to that contract go in the folder, as you see here.



(Testimony of Ray Spear.)

Q. I ask you to examine the contents, Mr. Spear, of that folder and state—

Mr. SCHLESINGER.—Would you mind showing that to us, please?

Mr. ALLEN.—Let Mr. Spear see it first and I will do so.

Mr. MORRIS.—You are asking him what it is.

Mr. SCHLESINGER.—I think we are entitled to see it in advance, your Honor please.

Mr. ALLEN.—Very well (handing paper to counsel for defendants).

Q. These instruments which I have shown to you, both the one admitted in evidence and the one which learned counsel have now in their possession, were shown to you last by whom? Who did you find having these instruments in their possession, who had them in possession?

A. This particular paper (showing)?

Q. Yes, and these various instruments which I am showing you now and hereafter, who had them?

A. They are part of my office records. [61—14]

Q. They are part of your office records. You can identify them as such, can you? A. Yes.

Q. I was trying to find out who last showed you these instruments before you came here as a witness, what person called these instruments to your attention?

A. I don't know that I have ever seen them. There are a great many papers on file in my office that I have never seen.

Q. I am asking you whether Mr. House, or who it

(Testimony of Ray Spear.)

was, called these particular matters to your attention?

A. Since I came here Mr. House did that.

Q. And they were in Mr. House's possession at that time? A. Oh, well, I understand you.

Q. That is true of this instrument offered in evidence? A. Yes, sir.

Q. And true of this instrument I have just shown you? A. Yes, sir.

Mr. KERR.—Personally you don't know whose possession they have been in?

A. I have seen these papers since I arrived in Seattle on this trip, yes.

Mr. ALLEN.—Can you identify, from the character of the instrument, the enclosure of this folder?

A. All the enclosures?

Q. All the enclosures, the first one particularly?

A. This paper here (showing) is the original Inspection Call of 1916, that is the number of it, signed by me, and covers the delivery of 50,158 pounds of rolled sheet zinc boiler plate 12 by 6 by  $\frac{1}{2}$  inch.

Q. That is signed by you and your signature? [62—15] A. Yes, sir.

Q. You recognize your signature? A. I do.

Q. Does that correspond with this first entry here, 1916 (showing)? A. Yes, sir.

Q. Could you say by comparison that refers to this (showing)?

A. I would say that refers to that item on the stock sheet, was taken up from that stock sheet.

Q. Through whose hands would that inspection re-

(Testimony of Ray Spear.)

port pass in your office?

A. Well, it would go through the Chief Clerk's hands and also the Storeman's hands.

Q. Who was the Chief Clerk to whom you refer?

A. Mr. Meyer.

Q. Did that pass through Mr. Meyer's hands, then?

A. Yes, on ordinary course of business of the office.

Q. When was that received by your office, if you can tell from an examination?

A. The material or the Call itself?

Q. That Call itself?

A. It was apparently received back from the Board of Inspection on March 17th, according to this receiving stamp.

Q. What year? A. 1908.

Q. In other words, that passed through your office on March 17th, 1908, and passed through Mr. Meyer's—across Mr. Meyer, the Principal Clerk, through his hands? A. I assume that from the record.

Q. That was the customary routine of your office?

A. Yes, sir. [63—16]

Q. Identify, if you can, any of the other instruments attached thereto.

A. This (showing) is the official form of notification used by the Bureau of Supplies and Accounts, Navy Department, Washington, D. C., to inform the General Storekeeper they have entered into a certain contract with certain parties on a certain date for material.



(Testimony of Ray Spear.)

Q. What is the material and what is the amount and price?

A. This particular one refers to a contract—

Mr. SCHLESINGER.—Your Honor please, it seems to me, if counsel intend to make the offer, that the document speaks for itself and ought to be shown to us, and then—

Mr. ALLEN.—I will withdraw the question.

Q. Can you identify that instrument as coming from your office during the time you were Paymaster there?     A. Yes, sir.

Q. That has reference to both the cover and the folder attached, the slip attached?

A. The paster attached.

Mr. ALLEN.—As there will be a number of these, your Honor, I suggest they be designated as exhibits number so and so, and these various papers be indicated as “A,” “B,” “C,” and “D.”

The COURT.—All right.

Mr. RIDDELL.—Why not introduce the folder and contents as one exhibit?

Mr. ALLEN.—Very well.

The COURT.—If the contents of this folder got into some other folder they would be confused. Say Exhibit “A” and “3-A.”

Mr. ALLEN.—The folder itself, then, your Honor, will be “3.”

The COURT.—Will be “3” and the contents “3-A,” “3-B” or “3-C.”

Mr. ALLEN.—Very well. [64—17]

Mr. RIDDELL.—These papers can all be iden-

(Testimony of Ray Spear.)

tified with the particular folder by reason of the endorsement on the folders and papers themselves, and if they should be mixed it would be merely a matter of looking them over by the accountant here and placing them back in the proper folder, and save a good deal of confusion if you simply mark the folder and contents as one exhibit.

The COURT.—Yes, I think so. Proceed.

(Folder referred to marked Plaintiff's Exhibit 3 for identification.)

Mr. ALLEN.—Identify, if you can, this particular instrument, Mr. Spear (exhibiting same to witness).

A. This is a copy of—it is the original, rather, of the bill of lading under which this material was shipped out here from La Salle, Illinois.

Q. You used the expression “this material.” To what material do you refer?

A. It is quoted in the bill of lading as “200 boxes of zinc, gross weight 52,558 pounds.”

Mr. SCHLESINGER.—I submit, your Honor, he ought not to read from the paper.

Mr. ALLEN.—Well, we offer it in evidence, then, your Honor, this folder—

Mr. MORRIS.—Won't you let us see it?

Mr. ALLEN.—Yes, but I make the offer now.

Mr. SCHLESINGER.—You make the offer now, Mr. Allen?

Mr. ALLEN.—Yes, sir.

Mr. SCHLESINGER.—Your Honor please, it is not quite plain to us what the purpose of this offer

(Testimony of Ray Spear.)

is, but assume the purpose of counsel to be that he will show, or can show, by this document that certain goods were sold to the Government at a less figure, is that your [65—18] purpose, Mr. Allen?

Mr. ALLEN.—The purpose of it is, so you will understand it, and I think the Court does, that this defendant Meyer had within his means, and had actually passed under his face, this consignment, or the invoice for consignment of zinc at \$7.15 a hundred, within one month of the time of the inspection of this particular requisition.

Mr. SCHLESINGER.—Now, it seems to me, that being the purpose, the paper is clearly objectionable. The fact that at other times prior to this alleged transaction in question the Government may have paid less or greater amount for material is absolutely immaterial, not only because of the quality of material used, not only because of fluctuations in price and value, but for a variety of other reasons. It does not follow that because at some prior time another concern sold materials to the Government at a less sum, that does not establish, or tend to establish, the fact that we have made here any unconscionable or any excessive profits. Indeed, in the course of this trial we will be able to demonstrate, if we deem it at all material, that goods have been sold to the Government at a larger price than were obtained either by Mr. Corder or by the Great Western Smelting Company. Now, if your Honor please, we claim this does not tend in the remotest degree to establish a single element of this charge.



(Testimony of Ray Spear.)

The COURT.—The objection at this time will be overruled.

Mr. SCHLESINGER.—And at this time, your Honor, we will note the usual exception.

The COURT.—Exception allowed.

Mr. ALLEN.—Your Honor, the folder with the enclosure which has been identified by the witness is offered in evidence as Plaintiff's Exhibit 3.

The COURT.—Admitted. [66—19]

(Folder referred to received in evidence and marked Plaintiff's Exhibit 3.)

Mr. ALLEN.—Mr. Spear, I call your attention to another exhibit here which I will ask you to identify, if you are able to do so.

The COURT.—This will be number "4"?

Mr. ALLEN.—"4" for inspection at least at this time.

A. I identify this as being the usual folder in which was kept the General Storekeeper's office copy of requisitions.

Q. That is the folder and where is the office copy?

A. It is pasted inside, as you see it here (showing).

Q. Do you identify that as being the ordinary and regular form of office copy?

Mr. SCHLESINGER.—Your Honor please, we object to the introduction in evidence or the examination as to any office copy.

Mr. SCHLESINGER.—We don't want to be bound by any office copies emanating from Mr. Kettlewell, or any copies furnished any office he had access to. If you have the original of that document

(Testimony of Ray Spear.)

perhaps we may consent to its going into evidence.

Mr. ALLEN.—Is this the original copy kept in your office?

A. Well, this is the original office copy, but the original of that requisition, of course, is on file in the Treasury Department.

Mr. SCHLESINGER.—Then we renew our objection. The original ought to be produced.

Mr. ALLEN.—We want to offer this with the explanation that Mr. House will explain the history of this instrument later.

The COURT.—Let it be offered later when Mr. House has testified.

Mr. ALLEN.—But I offer it for identification.

(Folder referred to marked Plaintiff's Exhibit 4 for identification.)

Mr. RIDDELL.—What is number "4," navy folder what? [67—20]

The COURT.—Office copy of requisition.

Mr. RIDDELL.—What requisition?

Mr. ALLEN.—That is kept in the Navy Yard at Bremerton?

A. It is part of the General Storekeeper's record.

Mr. MORRIS.—Will you kindly give me the number of that folder? A. I can't unless I see it.

Mr. RIDDELL.—No. 438.

A. That is not the folder number on the back. You are mistaken about that. That is the number of the requisition which that folder contains.

Mr. ALLEN.—The folder was the one in your office? A. Yes, sir.

(Testimony of Ray Spear.)

Mr. MORRIS.—I am trying to get some record.

Mr. ALLEN.—I call your attention, Mr. Spear,—

Mr. MORRIS.—Wait a minute, will you, Mr. Allen? May I ask the witness a question?

The COURT.—Yes.

Mr. MORRIS.—This is requisition number 438, Naval Supply Fund.

A. It seems I didn't have a chance to see what it was.

Mr. MORRIS.—That is what I want you to give us as those folders are handed to you. If you will, kindly give us the number of those folders and what they are.

A. You mean by the number of the folder the requisition number that it contains?

Mr. MORRIS.—Yes, that is what I want, and that would direct us to this folder, would it not?

A. Yes.

Mr. SCHLESINGER.—Is that the requisition number he gave?

Mr. MORRIS.—That will enlighten the Court and the Court can take the numbers. [68—21]

Mr. SCHLESINGER.—That was requisition number 438?

Mr. MORRIS.—Yes.

A. That is, folder contains requisition number 438.

Mr. SCHLESINGER.—Well, now, we have no objection to this being introduced in evidence. This bears the approval of the Navy Department, Washington, on April 8th, 1908.

The COURT.—What do you call that?



(Testimony of Ray Spear.)

Mr. ALLEN.—This, your Honor, is several instruments, and, as counsel stated, there is no objection to this.

Mr. MORRIS.—What is it?

Mr. ALLEN.—I am going to state it. The first instrument, the folder on the back, is a certificate of Mr. A. P. Andrews, Assistant Secretary of the Navy, bearing the seal of the Navy Department, bearing date of July 14, 1911, and including several originals to which they certify as being photographic copies of the original instruments on file in that department. The first instrument in the enclosure is a check, the same being number 82, bearing date of May 26, 1908, and made payable to the Fowler Metal Company for \$7,417.09, signed by Robert H. Orr, Paymaster, U. S. A. Endorsements on the back, “Pay to the order of E. Silverstone, Fowler Metal Company, by E. S. Fowler, President, and—(pause).

Mr. SCHLESINGER.—Secretary and treasurer, Mr. Goldberg’s initials at the bottom of it.

Mr. ALLEN.—E. S. Fowler, with some hieroglyphics, president and secretary, and the signature of E. Silverstone. Cut in the check is the word “Paid 6/2/08.” Endorsement is, “Received payment, Seattle Clearing House Association, on June 2d, 1908, First National Bank.” This has already been marked, and I now offer it in evidence. [69—22]

The COURT.—Exhibit number “5”?

Mr. ALLEN.—Number “5,” yes, sir.

The COURT.—I understand there is no objection?

(Testimony of Ray Spear.)

Mr. SCHLESINGER.—No, sir.

(Papers referred to received in evidence and marked Plaintiff's Exhibit 5.)

Mr. SCHLESINGER.—There is no folder for that, Mr. Allen?

Mr. ALLEN.—No, sir.

Q. I call your attention, Mr. Spear, to the third instrument in this folder, which purports to be a requisition for service of supplies on shore.

The COURT.—Third instrument in exhibit "5"?

Mr. ALLEN.—Yes, sir. State to the jury what that is?

A. This paper which I hold is a photographic copy of the original of requisition number 438, dated April 1st, 1908, Naval Supply fund, for stock; calls for one item 50,000 pounds of rolled sheet boiler plate  $\frac{1}{2}$  by 6 by 12.

Q. Do you identify this signature here (showing)?

A. I identify it as being my signature as General Storekeeper.

Q. Can you trace from that instrument its history?

A. Yes, sir, I could.

Q. State to the jury just what happened to that particular requisition, that is to say, from the endorsement or anything you find on it?

A. This requisition, and the handwriting that appears on the face of it, I take it was prepared by Mr. Meyer, bears his handwriting, which I am familiar with.

Q. Can you identify that as the handwriting of the defendant Meyer?

(Testimony of Ray Spear.)

A. Yes, sir, I identify it. It was apparently prepared either [70—23] personally by him or under his direction, and later this endorsement was written on there by Mr. Meyer and sent to my desk for signature. As you understand it, this is the only—the first copy, the first copy only of requisitions bear signatures; the others are merely blue copies used for the information of the different people that it passes through. I can't tell what was done from this particular data here for the reason I don't know the estimated cost.

Q. Was this copy, the original which you hold in your hand, was that sent to Washington or was it sent to Seattle, or was it sent to Honolulu, or what happened to it?

A. This was sent back to Washington, D. C., to the Bureau of Supplies and Accounts.

Q. Sent from where?

Mr. SCHLESINGER.—What are you referring to now?

A. The same instrument we were speaking of.

Mr. ALLEN.—Instrument No. 3?

Mr. SCHLESINGER.—I know, but there are several instruments attached to No. 3.

Mr. ALLEN.—No, sir, this is exhibit number “5” and instrument No. 3.

A. As I stated, it was sent from the General Storekeeper's Office, Navy Yard, Bremerton, Washington, to Navy Department, Washington, D. C., Bureau of Supplies and Accounts, for approval. It bears the approval of the acting chief of the Bureau, J. S. Car-



(Testimony of Ray Spear.)

penter, United States Navy.

Q. You do identify this handwriting, beginning at the word "Required" down to the word "Washington" as being the handwriting of Mr. Meyer, do you?

A. Yes, sir. [71—24]

Q. With your Honor's permission, I will read this requisition to the jury (reading same). I call your attention to instrument 4 in exhibit "5" and ask you if you can identify your signature on that instrument?

A. Yes, I identify that as being my signature.

Q. That is what you call a pay bill?

A. That is what we call a public bill, which is the final act of the transaction, paying the bill.

Q. And that calls for 59,575 pounds of zinc?

A. Calls for 59,575 pounds of zinc, rolled sheet boiler plates, that had been purchased on requisition 438, which I previously identified.

Q. In other words, this is the pay bill for this folder which we offered in evidence, and is also the pay bill for this original requisition which you have just identified and which I have just read?

A. Yes, sir.

Mr. SCHLESINGER.—Mr. Allen, do you personally consider that all of the statements in that requisition are correct?

Mr. ALLEN.—It is a photographic copy.

Mr. SCHLESINGER.—It calls for 50,000 pounds of metal at the sum of \$625.

Mr. ALLEN.—That will be explained to you in a minute.

(Testimony of Ray Spear.)

Identify this as number "6," if you will, please.

(Paper referred to marked Plaintiff's Exhibit 6 for identification.)

Mr. ALLEN.—Have you any objection to the offer of this instrument in evidence (exhibiting papers to counsel for defendants)?

Mr. SCHLESINGER.—I don't believe we have.

(Papers referred to received in evidence and marked Plaintiff's Exhibit 6.) [72—25]

The COURT.—What is it?

Mr. ALLEN.—This first page, your Honor, is the certificate of the Navy Department signed by Mr. Joseph Daniels personally, apparently so at least, bearing the seal of the Government.

The COURT.—Very well.

Mr. ALLEN.—I will ask you to identify that document and tell the jury what it is.

A. This is the third memorandum copy of that same requisition number 438, April 1st, 1908, calling for the same quantity, 50,000 pounds of zinc, rolled sheet boiler plates. This is the copy that has been detached by the Bureau of Supplies and Accounts in Washington when that requisition passed through their hands.

Q. What is the history, Mr. Spear, of that particular instrument, beginning at the time it originated in your office; where did it go to?

Mr. KERR.—You ask him for the history of it after it left his office?

Mr. ALLEN.—Well, beginning at his office, yes, sir, what was done with it from your office?

(Testimony of Ray Spear.)

Mr. KERR.—Not after it left his office.

Mr. ALLEN.—Did that originate in your office, Mr. Spear?

A. I have every reason to believe it is the copy of that.

Q. Well, assuming, because it is now admitted by counsel, it is a photographic copy and originated in your office, where did it go from your office?

The COURT.—What was done with it to your knowledge?

A. Sent to the Bureau of Supplies and Accounts, Navy Department, Washington, D. C.

Mr. ALLEN.—Sent directly to the Bureau of Supplies and Accounts at Washington, D. C., is that right? [73—26] A. Yes, sir.

Q. That never passed through the city of Seattle on its regular journey to Washington, I mean in an official way?

A. No, sir, this particular copy didn't.

Q. I call your attention now, Mr. Spear—first, let me ask you this question:—

Mr. MORRIS.—That particular copy, you say, did not pass from the navy yard to the Paymaster's office in Seattle? A. Yes, sir.

Mr. MORRIS.—What do you mean by that; you mean that the Paymaster's office was not notified that a requisition had been sent to Washington?

A. No, I didn't mean that at all. I said this particular copy. I didn't say anything about four or five other copies.

Mr. MORRIS.—Well, there were other copies made



(Testimony of Ray Spear.)

that were sent to the Paymaster's office here at the time that started to Washington, wasn't there?

A. It was the customary thing to do.

Mr. ALLEN.—Mr. Spear, how many copies of a requisition are prepared in your office?

A. I believe it was customary to prepare six, that is, the original, the white copy and five blue copies.

Q. Now state to the jury what became of those six different instruments?

A. At that particular time it was customary, when a requisition was prepared in which we had requested purchase through the Seattle Pay Office, to send an advance copy over to Seattle in order that they might get out their bids in advance—we would send this extra copy of the requisition over to the Seattle Pay Office in order that they might have advance information as to what the navy yard was [74—27] going to require, and in order that they might get bids ahead of time; that is, we assume when we were in a hurry for material, authority would be obtained in due course, although we couldn't obtain any contracts until the formal approval had been obtained, so one copy went to the Pay Office, one copy was retained in the General Storekeeper's Office, and the original and three copies were then sent to Washington, D. C. The bureau concerned, that is, the bureau that would have use for the material, kept one copy, and the Bureau of Supplies and Accounts kept its copy and the original was sent to the Seattle Pay Office by the bureau bearing the formal approval of the Navy De-

(Testimony of Ray Spear.)

partment for the purchase, and that was the authority for the Seattle Pay Office to go ahead and enter into a formal contract. Do I make myself clear?

Mr. ALLEN.—That is clear to me, I think, Mr. Spear. This was the copy which you identified a moment ago that came back to the Seattle office; is that right? A. Yes, and public bill.

The COURT.—That is exhibit “5,” is it?

Mr. ALLEN.—“5,” yes, sir. That is the one that came back to the Seattle office.

A. I identified this as being the copy that came back to the Pay Office.

Q. Mr. Spear, from any of the records I have shown you, or elsewhere, can you state as to whether or not bids were asked for this particular transaction?

Mr. SCHLESINGER.—We object to that on the ground the records themselves are the best evidence.

The COURT.—If this witness knows he can tell.

Mr. ALLEN.—Do you know, Mr. Spear, from these records, were bids asked for? [75—28]

Mr. SCHLESINGER.—Now, of your own knowledge, independent of the contents of the file.

A. That didn't come under my department.

Mr. ALLEN.—Mr. Spear, from the examination of that instrument which you hold in your hand, as well as these other instruments which have been shown you, can you tell this jury at this time as to whether or not bids were called for in this particular transaction?

A. I cannot answer that question.

(Testimony of Ray Spear.)

Q. Can you tell whether or not this material was advertised for following the custom of the navy?

Mr. SCHLESINGER.—Object to that on the ground it is calling for his opinion.

The COURT.—He may answer if he knows.

Mr. MORRIS.—The witness has answered he doesn't know.

Mr. SCHLESINGER.—Also on the ground the records themselves are the best evidence. Note an exception.

A. The record here would show the material was not advertised for, because it bears the approval of the Secretary of the Navy, or Navy Department, authorizing it be purchased without advertising.

Mr. SCHLESINGER.—We move to strike out the answer as being argumentative and no wise responsive, and not binding on any of these defendants.

The COURT.—The motion is denied.

Mr. SCHLESINGER.—Exception.

Mr. ALLEN.—Now, explain to the jury, Mr. Spear, what procedure was followed in this instance and how it varied from the usual and customary procedure.

Mr. SCHLESINGER.—We object to that upon the ground the rules and regulations of the department are the best evidence. This calls [76—29] for an opinion of the witness as to what custom existed there, and as to what departure was made from that alleged custom. We are not bound by his understanding; we are bound perhaps by rules, of the *rules were* called to our attention.



(Testimony of Ray Spear.)

The COURT.—The witness may answer if he knows what was done.

Mr. SCHLESINGER.—Exception. Will your Honor kindly explain to the witness by that question is meant his own personal knowledge.

The COURT.—Why sure. He knows that.

Mr. ALLEN.—Read the question.

Q. (Question repeated.)

The COURT.—If he knows, yes.

Mr. SCHLESINGER.—May I put a question to the witness?

The COURT.—Let him answer this question if he knows. Let this witness answer this question.

Mr. MORRIS.—Well, we want to examine the witness, your Honor please, before he answers the question to show he is not qualified to answer.

The COURT.—Let this witness answer the question if he knows. Proceed.

Mr. MORRIS.—Exception.

A. The estimated cost on this requisition—

Mr. MORRIS.—We object to that, your Honor.

A. Well, as the disbursing officer of the Government, familiar with the laws and regulations, I know what was done here, but I wasn't a witness to this transaction.

Mr. ALLEN.—Well, now, your Honor, I think he has qualified himself to answer. If your Honor thinks so I would like to have him answer.

Mr. MORRIS.—We insist he has disqualified himself.

(Testimony of Ray Spear.)

The COURT.—Read the question. (Question repeated.) [77—30]

Mr. MORRIS.—I say the answer disqualifies the witness from any further examination on that subject connected with his answer a while ago that he didn't know anything about it personally.

Mr. ALLEN.—I call your attention to this instrument No. 5 which has been offered in evidence, the back part of "3" thereof, as to whether or not that includes the instructions and rules which govern the operation of your department, now offered in evidence in the case.

Mr. ALLEN.—Can you, from an inspection of these instruments, by the examination of the regular endorsements that appear upon their faces, upon the back, or any part of the instrument, state, from your knowledge, the governmental records and records of the Navy Department, whether or not bids were asked for, whether or not advertisement was made in the purchase of that particular commodity.

Mr. SCHLESINGER.—Now, if your Honor please, that question ought to be somewhat separated, but to that part of the question which calls for his statement based upon records of the department, to that part of the question we object upon the ground that the records speak for themselves, and we are not bound by his recollection of what the records at that time indicated or what they are to-day. We are entitled to an inspection of the record and not to his independent understanding or recollection.

The COURT.—No, I think that after the witness

(Testimony of Ray Spear.)

has explained to the Court and jury the endorsements and the stamps, and everything found there, then he would be entitled, as an expert in that line, to say what was done from those memorandums and the jury can then determine what it was. Exception.

Mr. ALLEN.—Answer the question.

A. The signature down at the bottom, down here (showing), is by [78—31] the acting chief of the bureau, Bureau of Supplies and Accounts, Navy Department, in Washington. The face of the requisition bears the receiving stamp of the United States Navy Pay Office, Seattle, Washington, “Received on April 16th.” You will see it was approved on April 9th, and received in Seattle on the 16th of April. It could only be sent to Seattle for one purpose, and that was to complete the transaction.

Mr. SCHLESINGER.—Now, we move, your Honor, please, to strike out that part of the witness’ answer on the ground it is his opinion and argumentative.

The COURT.—That part, it was sent there for one purpose. State what appears there—

A. (Continuing.) As I say, it was received in the Seattle Navy Pay Office on April 16th. The stamp down here at the bottom (showing) indicates it was the original of his requisition, and was then returned to the General Storekeeper’s Office at the Navy Yard, Bremerton, on April 27th, 1908.

Mr. ALLEN.—What is that instruction?

Mr. KERR.—I object to it. If there is any instruction there, it speaks for itself.



(Testimony of Ray Spear.)

The COURT.—Let him read it. Note an exception.

A. The instructions, the order to the Seattle Navy Pay Office, reads as follows:

A. The order to the Seattle Navy Pay Office reads as follows: “Navy Department, Supplies and Accounts, April 9, 1908. The Purchasing Pay Officer, Seattle, Washington, is hereby directed to procure the above mentioned articles or services within the time stated, or as soon thereafter as practicable, and, upon the receipt of the vouchers showing the satisfactory delivery of the articles or performance of the service, is hereby authorized [79—32] to pay for the same at the prices contracted for or agreed upon. Signed, J. F. Carpenter, Acting Chief of Bureau.”

Mr. ALLEN.—Now, from your experience as an officer in the United States Navy, and familiarity with these books and accounts, and knowing, as you have ascertained the history of this requisition, can you now state to the Court whether, as a matter of fact, advertisement was made for the sale of this article? If it does not appear material other witnesses will prove it.

Mr. KERR.—Well, get that material witness.

Mr. SCHLESINGER.—The rule says in certain cases the advertisement may be and indeed should be waived, and this may have been one of those cases.

The COURT.—This asks whether an advertisement was made. Is there an objection to the question?

(Testimony of Ray Spear.)

Mr. SCHLESINGER.—Yes, your Honor, on the ground it is not proper cross-examination, immaterial and not binding upon the defendants.

The COURT.—Overruled in view of the other testimony.

Mr. SCHLESINGER.—Exception.

The COURT.—Exception allowed.

A. That particular transaction was not advertised.

Mr. ALLEN.—Mr. Spear, you have identified some of these instruments—

A. I have number 6 in my hand here, if you wish it.

Mr. ALLEN.—Yes, that is the one I want.

Q. These instruments came to you from what source when you signed your signature to this one, to the requisition (exhibiting paper to witness)?

A. That would come from the Chief of the requisition section, Mr. Meyer.

Q. I call your attention to the amount which is entered in the [80—33] original memorandum copy No. 3.

The COURT.—What exhibit is that?

Mr. ALLEN.—This is offered in evidence as exhibit number “6,” and calls your attention to the amount, \$625. Mr. Spear, was that amount, \$6,250, or was it \$625, when you signed that requisition?

Mr. SCHLESINGER.—Well, now, your Honor, please, it seems to me this is calling for the opinion or understanding of the witness. If that paper shows marks of obliteration or erasure it certainly speaks for itself.

The COURT.—He may state whether he thinks

(Testimony of Ray Spear.)

it was there or was not there when he signed it.

Mr. SCHLESINGER.—I don't know how his understanding can help this situation any.

The COURT.—If he knows those figures were different, he can say so.

Mr. SCHLESINGER.—Note an exception.

A. Well, may I refer back to a document I have already identified?

Mr. ALLEN.—Yes, sir, any of them, Mr. Spear.

Q. Mr. Spear, do you have any recollection of signing a requisition in the month of April, or thereabouts, 1908, for 50,000 pounds of zinc which carried with it an estimated purchase price of \$6,250?

A. I have no recollection of it.

Mr. ALLEN.—Have you seen this paper (handing paper to attorneys for defendants)?

Mr. SCHLESINGER.—Mr. Allen, let me ask you a question, please. Do you claim that 50,000 has been anywise changed?

Mr. ALLEN.—Don't make any claims in regard to it. I want the witness to make that. In one instance it has been. [81—34]

The COURT.—Proceed.

Mr. ALLEN.—I call your attention, Mr. Spear—

The COURT.—What exhibit is that?

Mr. ALLEN.—This will be exhibit "7."

(Papers referred to marked Plaintiff's Exhibit "7" for identification.)

Mr. SCHLESINGER.—Mr. Allen, would you mind telling us which one of those documents you are about to show to the witness?



(Testimony of Ray Spear.)

Mr. ALLEN.—I am going to show him number “7” here in a moment.

Mr. KERR.—Number “7” consists of a lot of documents.

Mr. SCHLESINGER.—Number “7” in a folder?

Mr. ALLEN.—I particularly wanted him to identify the folder and the form of this particular copy of the requisition which is pasted thereon.

Mr. SCHLESINGER.—You are now showing him the paper pasted in the folder?

Mr. ALLEN.—I am now showing you the folder itself. Can you identify that, Mr. Spear, as being like or similar to, or the kind in use in your office in the month of April, 1908?

Mr. SCHLESINGER.—May I ask a question? What is the folder number, please?

A. It is requisition 438.

Mr. ALLEN.—The same number we have been talking about. Can you identify that?

A. That is not a part of the records of my office, but I do identify it as a form that I am familiar with in use in purchasing pay offices in cities.

Q. Well, calling your attention to the inside of that folder, and attached to it, can you identify there, from the form or the make-up, or the appearance, that particular copy of the requisition there? [82—35]

A. Well, referring back to the previous documents that I have already identified, this is the sixth copy of the requisition 438, the original and other copies of which I have already identified.

(Testimony of Ray Spear.)

Q. Requisition 438 is for 50,000 pounds of zinc.

A. Calling for the same material I have referred to before, 50,000 pounds of zinc, rolled sheet,  $1\frac{1}{2}$  by 6 by 12.

Mr. MORRIS.—We can't hear a word you say. Give us the number of the folder you have in your hand, if it has a number.      A. 438.

Mr. ALLEN.—That is the number of the requisition, Mr. Morris, 438.

A. Navy Pay Office 438, dated April 1st, 1908.

Q. So the folder, then, is of the form that would be used in the Navy Pay Office, possibly, at Seattle, but this requisition on the cover on the inside of the cover, is the form of the requisition which is in use in your office, is that right?      A. Yes, sir.

Mr. ALLEN.—Have you any objection to this going in?

Mr. SCHLESINGER.—Mr. Spear, would you mind telling me the meaning of the figures 125 immediately opposite 6,250?

A. The figure .125 indicates the unit price estimated for that material.

Mr. SCHLESINGER.—That is, the figures .125 indicates the price of 50,000 pounds of zinc?

A. The unit price per pound.

Mr. SCHLESINGER.—50,000 pounds *per pound*?

A. Yes, sir.

Mr. SCHLESINGER.—Let me ask you this other question, Mr. Spear.

Mr. ALLEN.—This .125, to which reference has been made, was the [83—36] estimate, then, made

(Testimony of Ray Spear.)

by Mr. Meyer over in your office, is that right?

A. Yes, sir.

(Folder and contents referred to received in evidence and marked Plaintiff's Exhibit "7.")

Mr. ALLEN.—This would be stamped, your Honor, as Plaintiff's Exhibit "8," I believe. This is "Account E" at the top.

The COURT.—I understand that is admitted.

Mr. ALLEN.—That is admitted in evidence.

Mr. SCHLESINGER.—What number is that, please?

Mr. ALLEN.—This is the same requisition on 438, that is, it has reference to the same requisition.

(Folder and contents referred to received in evidence and marked Plaintiff's Exhibit "8.")

Mr. ALLEN.—Take a look at that, Mr. Spear, and tell the jury, loud enough for those men on that far end to hear, tell the jury just what that is.

A. This is the storehouse and the storeman's record of quantities on hand in his building; shows receipts and expenditures by quantities only.

Q. Is that the kind of stock slip you had in use in your office, or in your work over there, in the month of April, 1908? A. Yes, it is the same thing.

Q. Tell the jury from that how much zinc plate you had on hand on April 1st, 1908. That has been offered in evidence.

A. The last expenditure here was on the 18th of March, shows 52,404 pounds. There are no receipts or expenditures up to April 1st, so that is assumed to be the balance, 52,404.



(Testimony of Ray Spear.)

Mr. MORRIS.—What date was that?

Mr. ALLEN.—The last time they took zinc out of their stock he [84—37] said was March what, Mr. Spear?

A. I think was March 18th. Is it not given there? There fifty-two thousand and some odd pounds on hand.

Q. Yes, March 18th, then, they had 52,404 pounds.

A. There was no receipts or expenditures between that date and the first of April.

Q. I will ask you to examine the condition of that stock as of date April 2d, 1908?

A. On April 2d it shows that we received 2,066 pounds.

Q. And how much zinc did you have on hand April 2d? A. 54,347 pounds.

Q. What was the size of the zinc to which I have been referring? A.  $1\frac{1}{2}$  by 6 inches by 12 inches.

Q. Was that the same size zinc which was covered in this requisition 438 which I have been showing you? A. Yes, sir.

Q. Mr. Spear, some inquiry was made of you on Saturday afternoon with reference to a certain book, generally called Rules and Regulations of the Navy, and you stated at that time, as I recall, that the "Bible," as you term it, of 1905 was in force in 1908, is that true? A. Yes, sir.

Q. I offer for your inspection and identification a volume which you will identify for the Court and jury.

A. This is the regulations for the Government of

(Testimony of Ray Spear.)

the United States Navy written out in the year 1905. It was not superseded until 1909.

Q. Were the regulations as found therein in force in the year 1908, [85—38] in the months of January, February, March, April, May and June?

A. In the main, yes, sir; but, of course, during that interval many of the articles had been modified. These books are modified practically before we receive them.

Mr. SCHLESINGER.—Do you know in what respect that book has been modified, Mr. Spear?

A. I would have to audit the entire book.

Mr. ALLEN.—That is only modified by some letter that might be directed to you?

A. And general orders.

Mr. ALLEN.—We offer, your Honor, certain parts of this Blue Book, which are regulations directing officers of the United States Navy, including Mr. Spear.

Mr. SCHLESINGER.—We, your Honor please, shall have no objection to any particular rule being admitted in evidence if it be shown that rule was in existence during these alleged transactions.

The COURT.—Oh, yes, that must be shown.

Mr. ALLEN.—Calling your attention, Mr. Spear, to section 1309, I will ask you whether the rules there laid down were in force and effect during the year 1908, 1907 and 1908, with reference to the letting of bids for the purchase of supplies for the navy?

A. Yes, sir.

The COURT.—Now, let me ask, this exhibit, this

(Testimony of Ray Spear.)

book you have shown to the witness, was identified the other day as exhibit "1"?

Mr. SCHLESINGER.—No, your Honor, this is a new book.

Mr. ALLEN.—That was 1909 we had the other day, and the witness said 1905 was the ruling book.

The COURT.—Let this book be marked, then, as an exhibit so we will know what it is. That would be marked "9."

Mr. SCHLESINGER.—That is, for identification. Mr. Spear, [86—39] just a question. You are rather positive that particular rule has not been modified or changed?

A. I didn't say that. It might have been modified, but I said that the regulations in the main were in force.

Mr. SCHLESINGER.—And that particular section was in force during 1908? A. Yes.

Mr. SCHLESINGER.—From that statement, your Honor, we have no objection.

The COURT.—Very well. Now, let me ask, does that mean the entire book goes in or that section?

Mr. ALLEN.—Just that section.

The COURT.—That is section 1309 of exhibit "9."

Mr. ALLEN.—Yes.

The COURT.—It is admitted.

Mr. SCHLESINGER.—That is, as I understand, that particular section alone goes in?

Mr. ALLEN.—Yes, sir, and there is another to follow in just a moment.



(Testimony of Ray Spear.)

(Section 1309 referred to received in evidence and marked Plaintiff's Exhibit "9.")

Mr. ALLEN.—Section 1309, gentlemen, of the regulations for the government of the Navy of the United States, Volume 1905, which Mr. Spear has testified was in force and effect in 1908, reads as follows:

“There shall be three forms of purchase. That is,

A: By written contract under a formal written contract made after advertising for and receiving sealed proposals.

B: By open contract for service.

C: By open purchase, when the exigencies of the service require the immediate purchase or [87—40] delivery of articles not obtainable under existing contracts and they are procured in the open market.”

Q. Mr. Spear, I call your attention to section 1320 of the same volume,—

Mr. SCHLESINGER.—Mr. Allen, would you also mind identifying that by the page as well as by the section?

Mr. ALLEN.—The section which I have just read is found at page 285 of this volume. The section to which I am calling the witness' attention is found at page 287, section 1320, and ask you whether or not that section to which I am calling your attention was in full force and effect as a regulation of the United States Navy in the year 1907 and 1908?

A. Yes, sir, that has always been in force.

(Testimony of Ray Spear.)

Mr. SCHLESINGER.—(After examining same.)  
To that particular section we have no objection.

The COURT.—Admitted.

(Section 1320 referred to received in evidence and marked Plaintiff's Exhibit "10.")

Mr. ALLEN.—On page 287 is admitted in evidence as follows: "Immediate purchase under open purchase requisition shall be ordered only when an exigency exists that will not permit the delay incident to advertisement and contract."

Q. Mr. Spear, are there any regulations contained in this Blue Book, or elsewhere, which further define, or more fully define, the duties of Principal Clerk as it existed in your office, or as the office existed with you, in 1908?

A. I know of no instructions that refers specifically to Principal Clerk.

Q. His duties, then, Mr. Spear, were such as you gave him to perform, is that right? [88—41]

A. Yes, sir.

Q. Calling your attention, Mr. Spear, to this volume which I will ask you to look at and identify for the Court and jury,—

The COURT.—That is another book?

Mr. ALLEN.—Yes, sir.

The COURT.—That may be identified, then, as exhibit number "10."

Mr. ALLEN.—State, Mr. Spear, what it is.

A. The book which I hold in my hand here is mainly for general storekeepers' force at navy yards and stations. It was compiled by an officer of our

(Testimony of Ray Spear.)

corps merely for the information of us and as approved by the Secretary of the Navy. The purpose of this book is merely to outline what is considered good practice.

Mr. ALLEN.—Does that have the binding force as regards general instructions upon the officers of the Navy the same as if it was issued by the Navy Department?

Mr. SCHLESINGER.—I submit that is calling for an opinion of the witness.

The COURT.—Let the witness state what was done under those instructions.

A. This had the force of an order for the reason it was approved by the Secretary of the Navy.

Mr. ALLEN.—Calling your attention to page—

Mr. KERR.—What exhibit is that?

The COURT.—Number “10.”

Mr. ALLEN.—Any objection now to these quotations?

Mr. SCHLESINGER.—Just let me see the particular one. (After examining same.) We have no objection to 10 and 15 being read into the record.

Mr. ALLEN.—It is then admitted into evidence, your Honor, these parts of—the page doesn’t seem to be numbered. [89—42]

The WITNESS.—Isn’t that numbered at the bottom?

Mr. ALLEN.—This section 10 of the volume just identified by Mr. Spear, then, your Honor, is read into the record as Plaintiff’s Exhibit “10.”

The COURT.—Section 10.



(Testimony of Ray Spear.)

Mr. ALLEN.—Section 10 begins as follows: “The Chief Clerk of the Department, besides performing any special work assigned to him receives all incoming and forwards all outgoing papers of every description, and examines them before pointing them to their immediate destination. He places the time stamp on all papers received in the office by mail, messenger, or otherwise. He brings to the General Storekeeper’s attention any important matter without waiting for the papers pertaining to it to go through the usual routine.” I will omit the remainder, unless you want to put it in the record.

Mr. SCHLESINGER.—My understanding was, Mr. Allen, you had introduced in evidence all of that section. Am I right about it?

Mr. ALLEN.—I introduce that part of the section.

Mr. SCHLESINGER.—That was not your offer. I think the record will bear me out, all of it goes in.

Mr. ALLEN.—I have no objection to putting it in.

Mr. ALLEN.—I offer it only that far, your Honor.

Mr. SCHLESINGER.—Then, your Honor please, at this time we ask leave to read all of that section.

Mr. ALLEN.—They can read it, your Honor, in their case.

The COURT.—On cross-examination.

Mr. SCHLESINGER.—All right.

Mr. ALLEN.—The plaintiff offers in evidence section 15 of the same volume, mainly for the General Storekeeper’s force, identified by Mr. Spear and admitted in evidence by stipulation of counsel, [90—43] section 15, Plaintiff’s Exhibit number “11.”

(Testimony of Ray Spear.)

(Section 10 referred to received in evidence and marked Plaintiff's Exhibit "10.")

(Section 15 referred to received in evidence and marked Plaintiff's Exhibit "11.")

Mr. SCHLESINGER.—You propose to read all of that, Mr. Allen?

Mr. ALLEN.—Yes, sir, every bit of this. "The Requisition Clerk receives and forwards all open purchase and open contract requisitions prepared by yard departments. He receives all bureau requisitions, 'first' copies of requisitions returned from bureaus, and notices of contracts; and, after noting, sees that they are properly entered, copied (bureau requisitions), numbered or filed, as may be necessary. He prepares all open purchase requisitions for Naval Supply Fund stock, for purchase on account of contractors, and for fuel for officers, and open contract requisitions, for services of every character, not prepared by yard departments." Not necessary to offer the books in, I assume, your Honor?

The COURT.—Anything else in that book?

Mr. ALLEN.—No, I think not, your Honor.

The COURT.—Both are admitted.

Mr. ALLEN.—Your Honor will take judicial knowledge, of course, of the existence of this section, but for the information of the jury at this time I ask permission to read into the record part of the United States Revised Statutes found at page 390, it being a part of section 1581, for your Honor's information I will read it.

(Testimony of Ray Spear.)

Mr. SCHLESINGER.—I don't understand it is customary to read the law into the record. I have no objection, if you want to do it.

The COURT.—What is the section? [91—44]

Mr. ALLEN.—It is part of section 1581 of the Revised Statutes, Act of June 29, 1906, as amended by Act of February 26, 1907, and that part which is found on page 390 of the Revised Statutes, of the Supplement of 1909. "That hereafter the purchase of supplies and the procurement of services for all branches of the naval service may be made in open market in the manner common among business men, without formal contract or bond, when the aggregate of amount required does not exceed \$500, and when, in the opinion of the proper administrative officers, such limitation of amount is not designed to evade purchase under formal contract or bond and equally or more advantageous terms can thereby be secured."

Q. Was that section, and the other section which I have read into the record, were they in force and observed by the storekeepers of the Navy in the year 1908? A. Yes, sir.

The COURT.—He may answer whether they were observed or not. As to whether they were in force or not, that is a matter for the Court.

Mr. ALLEN.—Yes, sir, whether they were observed.

Mr. SCHLESINGER.—The Court will take judicial notice of the fact that such is the existing law.

Mr. ALLEN.—Then what was done in this case, and did you comply with the law and the rules and



(Testimony of Ray Spear.)

regulations controlling you in this particular transaction?

A. This particular transaction was in excess of \$500. And on that requisition bore the request that advertisement be waived. The only person who could approve that request was the Secretary of the Navy, and, therefore, that requisition was forwarded to the Department for action by that department.

Q. Calling your attention again to part of Plaintiff's Exhibit Number "5," now offered in evidence and part of the records in the [92—45] case, calling your attention to that part of the requisition which you testified the other day was the handwriting of Mr. Meyer, have you any recollection at this time as to whether or not that written memorandum was in there when you signed that requisition?

A. I have no recollection of it.

Q. One way or the other? A. No, sir.

Mr. MORRIS.—To what memorandum do you refer?

Mr. ALLEN.—That part of the written memorandum which reads as follows, that part which says, "required to fill requisitions from the Atlantic Battleship Squadron. Request waiving of advertisement and purchase through the Navy Pay Office, Seattle, Washington."

The COURT.—What exhibit is that?

Mr. ALLEN.—That is exhibit number "5," your Honor.

Q. Paymaster, when did the official information

(Testimony of Ray Spear.)

come to you, when did you know as to the time of the arrival of the fleet, of the Atlantic Battleship Fleet, in the city of Seattle, when did you get that information as to the definite time when it would arrive here?

Mr. SCHLESINGER.—We object to that as not being in anywise binding upon any of the defendants, and if the information is a matter of public record the record itself ought to be produced.

The COURT.—Overruled.

Mr. SCHLESINGER.—Exception.

A. Well, as early as January and February, thereabouts. I can't give you the definite date we knew the schedule.

Mr. SCHLESINGER.—What year, Mr. Spear?

A. 1908. We knew the schedule of the proposed arrivals and departures of the various fleets from the ports which they were to [93—46] visit.

Mr. SCHLESINGER.—We move to strike out the answer of the witness as not being responsive, and as being absolutely immaterial and not binding on the defendants.

The COURT.—Denied.

Mr. SCHLESINGER.—Exception.

Mr. ALLEN.—Did the fleet, as a matter of fact, adhere fairly well to that schedule which was laid out as early as January, 1908? A. Yes, sir.

Q. When did the fleet, the Atlantic Battleship Squadron, arrive in the city of Seattle, approximately what time?

A. If I remember correctly, it was May. I am not certain as to that date.

(Testimony of Ray Spear.)

Mr. ALLEN.—Take a look at the entire folder. Do you identify that as being a record from your office?

A. Well, this appears to be a yard record taken from the Commandant's correspondence files; it appears to be a record taken from the Commandant's office at the Navy Yard at Bremerton, his correspondence files.

Mr. ALLEN.—It may be marked, for the purpose of identification, as Plaintiff's Exhibit "11," I believe.

The COURT.—"11."

Mr. ALLEN.—"11" for identification. Calling your attention to that part of the exhibit—

Mr. KERR.—Mr. Allen, do I understand it is some record from the Commandant's office, is that right?

Mr. ALLEN.—Yes, a paper procured from the Commandant's office.

The COURT.—What is the objection?

Mr. SCHLESINGER.—The objection is it is an improper question, because he is now testifying from a document not in evidence. [94—47]

Q. Mr. Spear, from an examination of that instrument, if that does afford your recollection any help, can you testify positively as to the dates when these ships arrived, that is, the ships of the Atlantic Battleship Squadron, when they arrived in the harbor at Bremerton?

A. Well, my recollection is that the entire fleet arrived in the city of Seattle together, but they later split up and the various ships went to the yards.



(Testimony of Ray Spear.)

Q. Can you, from that memorandum, or otherwise, tell approximately when they arrived in Bremerton?

A. Yes, sir, it is listed here.

Mr. MORRIS.—What fleet is that?

Mr. ALLEN.—The Atlantic Battleship Squadron.

Q. What is the date, then, if that conforms to your recollection?

A. "U. S. S. Kentucky," arrived May 21st, 1908; the "U. S. S. Kearsarge" arrived May 27th; "Illinois" arrived May 27th; "Georgia" arrived June 1st; the "New Jersey" arrived June 1st; "Rhode Island," June 1st; "Virginia" on June 1st. That seems to be all of them.

Mr. ALLEN.—Do you know when the others arrived, Mr. Spear, as a matter of fact?

A. I do not, sir. It was sometime during May. The vessels split up later for the yard.

Q. Now, Mr. Spear, there is a letter in here we want to call the witness' attention to. I call your attention, Mr. Spear, to what purports to be a document enclosed in the same folder, and ask you, if you can, to identify that letter.

Mr. SCHLESINGER.—What are you showing him now, Mr. Allen?

Mr. ALLEN.—This is a letter purported to be signed by Ray Spear as Paymaster and dated April 22d, 1908, and bears file [95—48] number of 2288, offered for identification as plaintiff's exhibit—

The COURT.—Mark it for identification Plaintiff's Exhibit "12."

(Testimony of Ray Spear.)

(Paper referred to marked Plaintiff's Exhibit "12" for identification.)

A. I identify this letter as being a letter which I dictated myself.

Mr. ALLEN.—Is that your signature?

A. Yes, sir.

Q. That is the original, then, Mr. Spear, is it?

A. Yes, sir. It is a matter in which I took personal action.

The COURT.—That is admitted.

Mr. ALLEN.—I will take this out of the folder, because we don't offer the other in evidence.

(Paper referred to received in evidence as Plaintiff's Exhibit "12," same being read to the jury.)

Mr. ALLEN.—Mr. Spear, state to the jury whether or not on April 1st, 1908, whether there could have been in your office, or anywhere in the navy yard, or at least in your office, any memorandum of requisition from the Atlantic Battleship Squadron, except for possibly three battleships?

Mr. SCHLESINGER.—We object to that as calling for an opinion of the witness and not in anywise binding upon the defendants.

The COURT.—Overruled. He was the man who had charge of it.

Mr. SCHLESINGER.—Exception.

A. We could have only had at that time requisitions from the three ships mentioned there, I think the "Ohio," "Missouri," and one other.

Mr. ALLEN.—That is the time you refer to, April 22, 1908? [96—49]

(Testimony of Ray Spear.)

A. Yes, sir.

Q. Those three, as a matter of fact, Mr. Spear, may have come in after April 1st, 1908; is that true?

A. Yes, sir.

Q. Mr. Spear, I call your attention to a written memorandum—pardon me, I want to offer it to counsel first (handing same to counsel for defendants).

Mr. SCHLESINGER.—There is no objection, Mr. Allen.

Mr. ALLEN.—No objection to the introduction in evidence?

Mr. SCHLESINGER.—No, sir.

Mr. ALLEN.—By consent of counsel, your Honor, an instrument which I am now showing to Paymaster Spear, we offer as plaintiff's exhibit number—

The COURT.—Identified as exhibit "13."

Mr. ALLEN.—Calling your attention, Mr. Spear, to Plaintiff's Exhibit Number "13," I will ask you to identify that, if you can do so.

A. This paper which I hold in my hand is a copy of the original appointment of Mr. E. F. Meyer from the position of bookkeeper at the Navy Yard, Bremerton, Washington, to the position of Principal Clerk. The letter is signed by the Secretary of the Navy. This letter was obtained from the files of the Accounting Officer, Navy Yard, Bremerton.

Q. Calling you attention to the signature on the bottom, I will ask you if you recognize that signature.

A. I do, the signature of Edwin F. Meyer.

Q. The defendant in this case?      A. Yes, sir.

(Paper referred to received in evidence and



(Testimony of Ray Spear.)

marked Plaintiff's Exhibit "13," same being read to the jury.) [97—50]

Q. Mr. Spear, did Mr. Meyer serve in that same capacity from the time of that memorandum, so far as you know, down continuously until away along in the latter part of the year 1908 as Principal Clerk?

A. Yes, sir.

Mr. ALLEN.—I offer for identification, and present it to the Clerk for marking for the purpose of identification, exhibit "15," which, for the information of counsel, is requisition number 169 of the series of 1908, and I don't see any other number here that is of any particular value to you, marked as Plaintiff's Exhibit "15" for identification.

(Papers referred to marked Plaintiff's Exhibit "15" for identification.)

The COURT.—Serial number what?

Mr. ALLEN.—Series No. 1908.

Q. Can you identify this folder, Mr. Spear, from your inspection?

Mr. SCHLESINGER.—Mr. Allen, would you mind telling me the character of that transaction?

Mr. ALLEN.—That is a zinc transaction. These I am going to call attention to now are zinc purchases.

A. This is the folder containing my office copy of requisition No. 169, which is taken from the files of the General Storekeeper's office, apparently. It has a zinc item—

Mr. MORRIS.—I understand that is only offered for identification?

(Testimony of Ray Spear.)

Mr. ALLEN.—Yes, sir, but I want him to describe it so as to get it in the record.

Mr. MORRIS.—We object to it, your Honor, because I understand it is only—

The COURT.—The objection is overruled. We the just finding out if it should go in. [98—51]

Mr. MORRIS.—Exception.

A. It is requisition No. 169, dated November 19, 1907, and contains one item calling for 4,000 pounds of zinc plates for boilers 1½ inch by 6 by 12.

A. The unit price, the estimated cost or unit price is 12 cents a pound.

Mr. SCHLESINGER.—We object, your Honor, please, to any question relating to the unit cost or price unless it relates to this particular transaction.

Mr. ALLEN.—Well, it is relating to this transaction.

Q. Mr. Spear, state, from inspection of the folder and its contents, this award made in that particular transaction, and to whom made, and the price at which it was made.

Mr. SCHLESINGER.—Now, if your Honor please, we object to that upon the ground the folder is not in evidence and the witness has no right to testify concerning its contents. We haven't any objection to explaining every transaction legitimately involved here, but we don't want to go into matters entirely foreign to the issue, and that is involving perhaps thousands of transactions with this and other concerns in Seattle.

Mr. SCHLESINGER.—Mr. Allen, will you allow

(Testimony of Ray Spear.)

me to ask you a question?

Mr. ALLEN.—Yes.

Mr. SCHLESINGER.—Is it not a fact that if the Government, the heads of the Department, did not like the bid of Mr. Goldberg, representing this Western Smelting Company, they could have and would have rejected that bid; isn't that true?

Mr. ALLEN.—Mr. Schlesinger, in some cases they did.

Mr. SCHLESINGER.—What did Mr. Goldberg have to do with the awarding of the bid? Nothing at all. [99—52]

Mr. ALLEN.—We want, your Honor, the record to show these exhibits which are under Mr. Spear's care are really offered in evidence. The offer was made in all cases, and hereafter we expect to renew the offer when they are coupled up with the testimony of Mr. House, and possibly the Paymaster at the yard. We want the record to show we made the record to introduce all of them, so hereafter—

The COURT.—Oh, I admit that.

Mr. ALLEN.—You may take the witness, gentlemen.

On cross-examination, the witness testified as follows:

(By Mr. MORRIS.)

I am at the present time Paymaster in the United States Navy and am the Senior Assistant General Storekeeper at Norfolk, Virginia.

My title in the services is Paymaster.



(Testimony of Ray Spear.)

The Norfolk yard is the second largest yard in the United States, that is, next to New York. You could put the Navy Yard of Bremerton in one corner of it.

I was General Storekeeper of the Puget Sound Navy Yard from January, 1908, until I think the 22d of August, 1910.

When I arrived at the Puget Sound Navy Yard I found the defendant Edwin F. Meyer, as Principal Clerk and acting Chief Clerk; also chief of the requisition section.

In January, 1908, I had in addition to Mr. Meyer, several other clerks in the Storekeeper's Department of the navy yard.

I mentioned a number of those clerks in my direct examination. I didn't mention them all.

Mr. Meyer was also a requisition clerk and I think Mr. Meyer was handling the clothing and small stores and provisions at the [100—53] same time; he also was at the time when I arrived there, the correspondence clerk, and he was the official clerk for the officers' fuel.

In the early part of 1908, Mr. Barnes was not connected with the Storekeeper's Department of the Puget Sound Navy Yard.

Q. That is, April of 1908 is the April in which this requisition for zinc we are now trying originated?

A. I believe so.

Q. But Mr. A. W. Barnes was appointed clerk and assumed his duties in the fall following this April of 1908? A. Yes, sir.

Q. Your office force in January, February, March

(Testimony of Ray Spear.)

and April, and during the summer of 1908, was very small, was it not?

A. Yes, sir, considering the volume of work turned out.

Q. And you had in store approximately 60,000 or more items, did you not?

A. Well, of course, that would be a good deal of a guess, but I know that the Navy Yard in Norfolk has approximately that quantity, that number of separate and distinct items, and I assume we probably had about the same.

Q. Yes, sir, about the same number.

A. I never have counted them.

Q. Now, previous to assuming your duties as storekeeper at the Puget Sound Navy Yard in January of 1908, you had been connected with the Mare Island Navy Yard, had you not?      A. Yes, sir.

Q. You were connected with the Storekeeper's Department of the Mare Island Navy Yard?

A. Yes, sir.

Q. And you were at the Puget Sound Navy Yard, from January, 1908, [101—54] continuously for about two years, were you not?      A. Yes, sir.

Q. That would extend your service to the latter part of the year 1910?      A. Yes, sir.

Q. And during all of that time this defendant, Edwin F. Meyer, was one of your clerks?

A. Yes, sir.

Q. I understood you to state that in January or February of 1908 you were advised that the Atlantic Fleet was to arrive at the Puget Sound Navy Yard,

(Testimony of Ray Spear.)

is that correct?      A. Some time thereabouts, yes.

Q. Sir?

A. Sometime thereabouts. Of course, we knew the battleship was coming around to the Pacific Coast as far back as November, when the trip was being planned.

Q. But what I understand by that, you knew that the Navy Department was anticipating sending the fleet, Atlantic fleet, to the Pacific Coast?

A. Well, as a matter of fact, that was why I was sent up from Mare Island.

Q. Yes, sir, I was coming to that, Mr. Spear, that was my object. You were sent from Mare Island to take charge of the Puget Sound Navy Yard on account of the fact that the Atlantic Fleet was to be sent to the Puget Sound Navy Yard to be supplied and outfitted for a cruise around the world?

A. Yes, sir.

Q. Now, Mr. Spear, at the time you arrived at the Puget Sound Navy Yard, in January, 1908, was the Pacific Fleet at the Puget Sound Navy Yard? [102—55]

A. I think there were a number of vessels of the Pacific Fleet. Whether the entire fleet was there or not, I don't know.

Q. Now, when we speak of the Pacific Fleet I wish you would explain to this jury just what you mean by the Pacific Fleet, and the number of vessels that was then connected with the Pacific Fleet, as nearly as you can. I don't expect you to remember definitely.

A. Well, the principal force of the Pacific Fleet at



(Testimony of Ray Spear.)

that time, as I recollect it, was the Army cruisers, the "Tennessee" and "Washington," then probably the largest cruisers we had at that time, if not now. And in addition to that we had the "Colorado," the "West Virginia," the "Maryland," the "South Dakota," the "Maryland" and "California," six vessels of a type in addition to those other two.

Q. "Pennsylvania"? A. "Pennsylvania."

Q. "Milwaukee"? A. Yes, I think so.

Q. "Tennessee"? A. Yes, sir.

Q. The "St. Louis"?

A. Yes, she was in the vicinity.

Q. "Colorado"? A. Yes.

Q. The "California"? A. Yes, I named those.

Q. The "Washington"? A. Yes.

Q. Is it not a fact that in January, February, March and April, that you were called upon, as store-keeper, to supply the Pacific Fleet? [103—56]

A. Yes, sir.

Q. And at that time is it not a fact that you were not in favor of furnishing supplies to said fleet?

A. Yes, sir.

Q. That is, the Pacific Fleet. And the reason that you did not wish to supply this Pacific Fleet with supplies was because you anticipated, within a short time, the arrival of the Atlantic Fleet?

A. Yes, sir, that was in the main the reason.

Q. Now, Mr. Spear, the Atlantic Fleet at that time was composed of how many vessels?

A. Sixteen ships, that is, four types of four ships each, and in addition to that, of course, they had the

(Testimony of Ray Spear.)

supply ships and colliers along with it.

Q. And eight at least of the Atlantic Fleet was expected by you to be outfitted and supplied at the Puget Sound Navy Yard?      A. Yes, sir.

Q. And in addition to these eight battleships you say that there were other vessels that accompanied the Atlantic Fleet?

A. Well, we didn't get them up here; we had nothing to do with the colliers.

Q. You had nothing to do with the colliers. Now, at that time you anticipated furnishing the Atlantic Fleet with supplies for their cruise around the world?

A. Well, I wouldn't go so far as to say that. We were giving them whatever they asked for.

Q. You anticipated supplies for six months?

A. Something like that, yes, sir.

Q. Something like that, six months. Now, this Atlantic Fleet was composed of what is known as battleships?      A. Yes, sir. [104—57]

Q. The Pacific Fleet was composed of what was known as cruisers?      A. Yes, sir.

Q. The battleships were large vessels carrying numerous men and officers?

A. Yes. No greater number, however, than these large army cruisers carry.

Q. Now, is it not a fact that that battleship fleet carried from 500 to 900 men per ship?

A. Yes, sir.

Mr. MORRIS.—I would like to ask, if your Honor please, is the prosecution through with its direct examination of Mr. Spear?

(Testimony of Ray Spear.)

Mr. ALLEN.—We have reserved, as you well know, this question of this collateral, which will be taken up at a later time. There may be some other questions we want to examine Mr. Spear about which haven't occurred to us. I presume your Honor will permit us. It is the usual custom to do that.

Mr. MORRIS.—I anticipated that might arise. If that is so, we respectfully request we be allowed to withhold our cross-examination until the Government has introduced its evidence in chief.

By the COURT.—Very well, do just as you like with this witness.

By the COURT.—Proceed. The objection is overruled.

Exception allowed, as far as it pertains to the bronze, anything in relation to the bronze transaction.

Mr. SCHLESINGER.—Exception. I understand your Honor's ruling, does that extend to the matter of price?

By the COURT.—Upon the zinc, but on the bronze, there are the two prices, I understand a difference of 30c and 50c.

Mr. SCHLESINGER.—Yes, that is true with respect to that particular lot.

By the COURT.—As to that particular lot, why there they involve [105—58] prices.

(Jury recalled.)

Mr. ALLEN.—I will ask the witness a few more questions.

Q. Again calling your attention to Plaintiff's Ex-



(Testimony of Ray Spear.)

hibit Number "14," that is requisition number 649, which has to do with purchase of certain supplies for the United States Government. I will ask you to take a look at the enclosures, and you have heretofore, I understand, identified that folder as being part of the files of your office?

A. This was taken from the files of the General Storekeeper's office at the Navy Yard, Bremerton.

Mr. ALLEN.—We offer that, your Honor, in evidence.

Mr. SCHLESINGER.—Now, your Honor please, we formally object to the introduction of the folder and its contents in evidence upon the ground it is immaterial, incompetent and irrelevant, and is in no wise binding upon the defendant, and does not tend to prove any of the charges contained in the conspiracy, and does not tend to prove any crime, or even any irregularity, and is, therefore, totally inadmissible.

The COURT.—That folder contains memorandum with relation to the bronze?

Mr. ALLEN.—Yes, sir.

Mr. SCHLESINGER.—And we also wish to object to the introduction of that on the ground it is too remote in point of time.

Mr. VANDERVEER.—I object on behalf of Mr. Corder—

The COURT.—Just a minute. What is the time of the purchase?

Mr. ALLEN.—The actual requisition bears date of May 23d, 1908.

(Testimony of Ray Spear.)

The COURT.—Admitted. Overruled. It is admitted in evidence.

Mr. SCHLESINGER.—Exception.

Mr. VANDERVEER.—I was only going to repeat, it is entirely [106—59] irrelevant and immaterial as far as Mr. Corder is concerned.

The COURT.—Overruled.

Mr. VANDERVEER.—Do I understand, your Honor, that all of the contents of that folder have been admitted in evidence?

The COURT.—So far as it relates to the purchase of the bronze.

Mr. ALLEN.—They all relate to that, as a matter of fact.

Mr. VANDERVEER.—That is, all of the separate papers?

The COURT.—But not the other, not the zinc.

Mr. ALLEN.—No, sir, this is toban bronze.

Mr. VANDERVEER.—Note an exception.

Q. I call your attention to this requisition contained in the folder, and admitted in evidence, and call your attention more particularly, Mr. Spear, to the items with reference to toban bronze as set out there on the requisition. Can you take the items of toban bronze—

A. On this requisition number 649, dated May 23d, 1908, purchase for stock, were issued to the Atlantic Squadron. Item 12, 32—

Q. On this requisition number 649, dated May 23d, 1908, purchase for stock, for issue to the Atlantic Squadron, item 12 to 32, both numbers inclusive, call

(Testimony of Ray Spear.)

for certain sizes of toban bronze.

Q. You identified from 12 to 32?

A. Items 12 to 32, both inclusive.

Mr. ALLEN.—Item 12, gentlemen, is 20 pounds of one-quarter inch toban bronze, estimated price 40 cents a pound, \$8. 75 pounds of three-eighths inch toban bronze, 40 cents a pound estimated price, \$30. 200 pounds of one-half inch bronze, 40 cents a pound, \$80. 100 pounds of five-eighths inch toban bronze, 40 cents a pound, that is the estimated price, \$40. 250 pounds of three-quarter inch toban bronze, estimated price 40 cents, \$100. 50 pounds of [107—60] seven-eighths inch, estimated price 40 cents, \$20. 150 pounds one inch, estimated price 40 cents, \$60. 50 pounds one and one-quarter inch, estimated price 40 cents, \$20. 50 pounds, one and one-half inch, estimated price 40 cents, \$20. 100 pounds, 40 cents, \$40. 50 pounds, one and seven-eighths inch, 40 cents, \$20. 360 pounds, two-inch, 40 cents, \$140. 100 pounds, two and one-quarter inch, 40 cents, \$40. 200 pounds, two and one-half inch, 40 cents, \$80. 300 pounds, 3 inch, 40 cents, \$120. Item 27. 20 pounds, one and one-eighth inch, 40 cents, \$8. 50 pounds, three-quarter inch toban bronze, hexagon in shape, cross flaps, estimated cost 40 cents, \$20. 100 pounds, seven-eighths inch toban bronze, 40 cents, \$40. 50 pounds, one and one-eighths inch, 40 cents, \$20. 200 pounds, one and one-quarter inch, 40 cents, \$80. 50 pounds, one and one-sixteenth inch, 40 cents, \$20. All the above vest quality of manufacture, to be delivered on the wharf at the Navy Yard, Puget Sound,



(Testimony of Ray Spear.)

Washington, within five days after order.

Q. Now, from the inspection of these other instruments, can you ascertain just to whom the different items particularly mentioned, with reference to Great Western, what items were awarded to the Great Western Smelting & Refining Company?

Mr. SCHLESINGER.—Of course, if your Honor please, it is understood all these questions are under our general objection.

Q. Calling your attention to the award, Paymaster, in that matter, can you find there those items as comparing—those are all awards to the Great Western, are they?

A. This is the award to the Great Western Smelting & Refining Company. I will name the items, if you wish.

Mr. ALLEN.—I will read that to the jury, Mr. Spear, with your [108—61] permission. This is the award of June 10, 1908.

(Reading same to jury.)

Q. Can you find there the award as made at this time to other companies to which awards were made?

A. Yes, I find an award dated here June 10th to the Whiton Hardware of 110 First Avenue, Seattle, Washington.

Q. That is the same award, same purchase, this award was made the same time?

A. Yes, of other items.

Q. Other items on the same requisition?

A. Yes, sir.

(Testimony of Ray Spear.)

(Reading to the jury award to the Whiton Hardware Company.)

Q. Calling your attention, Paymaster, to the bill enclosed in that folder, which shows the number of pounds actually consigned by the Great Western Smelting & Refining Company?

A. I find a bill here covering the same inspection call, which you referred to previously.

Q. From which I have just been reading?

A. Calling for 1497 $\frac{1}{3}$  pounds at 50 cents a pound, total is \$748.63.

Mr. SCHLESINGER.—And the delivery was called for in three days?

Mr. ALLEN.—Yes.

Mr. SCHLESINGER.—As late as June the 28th.

(Reading bill of Great Western Smelting & Refining Company to jury.)

Mr. ALLEN.—What was the result of the inspection on this 1497 pounds of toban bronze that was delivered there by the Great Western people on this bid of seven hundred and some odd [109—62] dollars, what happened to that consignment when it reached there?

Mr. SCHLESINGER.—Now, we object to that as being a matter of public record and the document speaks for itself.

Mr. ALLEN.—Well, I wanted to find it. I will read it to the jury, if that is satisfactory.

The COURT.—That part of the same exhibit?

Mr. ALLEN.—Yes, your Honor. It is all the record of that same particular transaction.

(Testimony of Ray Spear.)

The COURT.—He may answer.

Mr. SCHLESINGER.—Exception.

A. Well, there is something very peculiar about this record here.

Q. What is there peculiar about it?

A. The first inspection of the first delivery of the Great Western Smelting & Refining Company on Call 3174 shows that the entire quantity was passed by the Board of Inspection, and later that this Call was cancelled. The record over here, which should show the rejection, does not make any reference, however to—

Mr. SCHLESINGER.—Your Honor, what the record should show or does not show, we move to strike out.

The COURT.—It is so stricken.

Q. Show what was accepted of that 1474 or 5 pounds of toban bronze, how much was accepted, from that record?

A. Well, as I say, the entire quantity—

Mr. SCHLESINGER.—Mr. Spear, may I ask you right here, this is a good time to interrupt you, does the record show that Mr. Meyer had that lot re-inspected and caused it to be rejected?

A. The record itself?

Mr. SCHLESINGER.—Yes, the record itself.

[110—63] A. I couldn't say as to that.

Mr. KERR.—Speak louder.

Mr. ALLEN.—He said he couldn't say.

Q. Find the result of this inspection, and how



(Testimony of Ray Spear.)

much of this toban bronze was accepted by the officials at Bremerton?

A. Well, on August 15, 1908, call number 510 passed 935 pounds, from the lead pencil totals, I haven't verified that total, but that would appear to be the amount that they accepted of that 1400-pound delivery.

Mr. ALLEN.—This is the inspection on this 1475-pound delivery, when they made an award of seven hundred and some odd pounds.

Q. Now, from a comparison of these figures, Mr. Spear, it shows, then, that the Great Western Smelting & Refining Company was awarded seven hundred and some odd pounds?

A. Fourteen hundred and some.

Q. No, they were awarded how many pounds?

A. 747 or 8.

Q. 747 or 8 pounds, and when the inspection was had on this 740-pound delivery they actually passed 935 pounds, is it, Mr. Schlesinger?

Mr. SCHLESINGER.—Whatever the figure shows.

Mr. ALLEN.—They actually accepted 935 pounds?

A. 935 pounds.

Q. Does the record show what was done with the toban bronze which was an excess delivery beyond that which the Government accepted; in other words, the difference between 1475 pounds and the 935 pounds which was accepted, 1497 pounds?

Mr. SCHLESINGER.—Well now, your Honor please, I cannot for the life of me see what difference

(Testimony of Ray Spear.)

it would make what the Government did with that bronze. [111—64]

The COURT.—The record shows that.

Mr. SCHLESINGER.—How is it binding upon us, whether the Government used the bronze or didn't use the bronze, what difference does it make, how can it bind us in any way. Mr. Goldberg, or rather his company, or employer, had no control over the use by the Government of that particular bronze. We didn't compel the Government to use the bronze, or destroy the bronze, to consume the bronze, discard the bronze.

The COURT.—Let him answer. Proceed.

Mr. SCHLESINGER.—Exception.

Mr. ALLEN.—I will withdraw that question and put it in this form.

Mr. SCHLESINGER.—The question withdrawn?

Mr. ALLEN.—In that particular form, because I misquoted the figures, Mr. Schlesinger.

Q. Then from the award made to the Great Western of 935 pounds of their total delivery there of 1497 pounds and a quarter, explain what happened to the 562 pounds and a quarter, if you can, from the record.

Mr. SCHLESINGER.—Same objection, your Honor please.

The COURT.—Same ruling. Proceed.

Mr. SCHLESINGER.—Exception.

A. Will you let me see the papers in the case? I think you have them.

Q. Certainly (handing papers to witness).

(Testimony of Ray Spear.)

A. I believe there is a Call missing here that is referred to in that record.

Mr. ALLEN.—Then, Paymaster, if the Government purchased and accepted 935 pounds out of a real consignment of 1497 pounds and a quarter, leaving 562 pounds and a quarter, sent by the [112—65] Great Western people, what would become of that excess?

Mr. SCHLESINGER.—We object to that as not being binding upon the defendant.

The COURT.—Let him answer.

Mr. SCHLESINGER.—Exception.

A. That should show on the copy of the Inspection Call as having been rejected as an excess delivery.

Mr. SCHLESINGER.—Now, we move to strike out the answer.

The COURT.—Let it stand.

Mr. SCHLESINGER.—Exception.

The COURT.—Note an exception.

Mr. ALLEN.—But the Government accepted on this requisition 935 pounds; they never accepted the 500 on this record?

A. On this record they did not.

Mr. SCHLESINGER.—Let me see if I understand that. Do you claim the Government paid for the quantity rejected?

Mr. ALLEN.—I will explain to you now. You seem to want to know.

Mr. SCHLESINGER.—I think I am entitled to know.



(Testimony of Ray Spear.)

The COURT.—You can explain that in a word or two.

Mr. ALLEN.—Yes, your Honor. The Government accepted 935 pounds, and there is 1497 over there, so there is  $562\frac{1}{4}$  pounds that belongs to the Great Western people. Now, we propose to show, your Honor, that a new requisition appears.

The COURT.—Proceed.

Mr. ALLEN.—I call your attention to this instrument and ask you if you can identify that?

Mr. SPIRK.—Has this been marked for identification?

Mr. ALLEN.—Not yet.

A. This is the folder of requisition number 207.  
[113—66]

Q. Taken from the yard, in your office?

A. Files of the General Storekeeper's office at Bremerton.

Mr. ALLEN.—I offer that for identification.

(Papers referred to marked Plaintiff's Exhibit "16" for identification.)

Mr. ALLEN.—We now offer that in evidence, your Honor.

The COURT.—Which?

Mr. ALLEN.—It is requisition number 207, the same bearing date of August 14, 1908. That goes in the same files, Mr. Schlesinger.

(Papers referred to, marked Plaintiff's Exhibit "16" for identification, received in evidence and marked Plaintiff's Exhibit "16.")

Q. Calling your attention to this requisition, I ask

(Testimony of Ray Spear.)

you to take a look at the files contained in the folder.

A. I find an Inspection Call here number—

Q. Get first the requisition.

A. Oh, you want this number?

Q. Yes.

A. Pasted to this folder is the office copy of requisition 207, dated August 14, 1908, and calls for seven items of toban bronze.

Q. That includes an item in regard to the estimated cost. Who prepared the estimated cost of that item during that time in your office?

A. It was the duty of Mr. Meyer.

Q. Mr. Meyer, the defendant. This is requisition number—

Mr. VANDERVEER.—It is understood this is all under our objection.

The COURT.—Let the record so show.

(Paper referred to read to the jury.) [114—67]

Q. Mr. Spear, these figures, then, are all at fifty cents a pound, and the total pounds would be the aggregate of the figures given here at the left, is that right (showing)?

A. That would be the quantity, yes, sir, called for.

Q. That is, 72 $\frac{1}{4}$  pounds plus 133 $\frac{3}{4}$ ?

Mr. ALLEN.—I will ask you to compare the residue left on hand, 562 $\frac{1}{4}$ , of the original requisition, which was just offered you a moment ago, the same being Plaintiff's Exhibit Number "15." I will ask you to compare the aggregate number of pounds in these two requisitions, the balance that is left on

(Testimony of Ray Spear.)

hand over there and this requisition as made at this time?

A. The total as called for in this requisition is apparently  $562\frac{1}{4}$ .

Q. That agrees, then, with the balance or excess delivery of the Great Western people in the other requisition number 15 which I have just shown you to the pound, does it not? A. I believe it does.

Q. Now, identify and compare, I will get you the other requisition, compare the different kinds of material described in the requisition which you have before you for this excess delivery—compare the items contained in the excess delivery, if you can do so, that which was not accepted, and the requisition number “16” for this excess delivery which you say is identical in amount, 562 pounds. Can you compare them?

A. I will have to do a little bookkeeping and make some subtractions.

The COURT.—Have you the figures now?

Mr. ALLEN.—I haven't got them, no, sir. Here is the original requisition (exhibiting same to witness).

A. I don't quite understand the question. [115—68]

Q. Compare for this jury, by ascertaining from those records, the articles which were left on the dock, or which were not accepted by the United States Government, and then compare with that the articles which were identified and described in the new requisition which was sent through on August



(Testimony of Ray Spear.)

14th. You just testified they are identical, the excess left over is identical in pounds with the new requisition. Now, explain to the jury exactly how they compare as regards the kind and quality of toban bronze, lengths, sizes and everything of that sort. This probably belongs in there, too (handing paper to witness). A. This is an awful job.

Mr. SCHLESINGER.—Your Honor probably understands it calls for time August 14, 1908. The alleged conspiracy terminated on the 31st day of May, 1908.

Mr. ALLEN.—About two months difference, or a month, or something.

A. Well, the first item on this requisition calls for  $72\frac{1}{4}$  pounds of toban bronze,  $\frac{5}{8}$  diameter. The previous requisition had called for 100 pounds of which the 78 pounds was accepted.

Q. The sizes are identical, are they?

A. The sizes are identical.

Q. Compare the sizes all the way down.

A. On this other—I am referring to this first item, now.

Q. Yes.

A. So that the new award to the Great Western Smelting called for approximately the difference between the two.

Q. The excess delivery, is that right?

A. Yes, sir, approximately 20 pounds.

Q. I see. Now, compare the next one.

A. On the one inch calls for—the new requisition called for  $143\frac{3}{4}$  [116—69] pounds. Apparently

(Testimony of Ray Spear.)

that was not accepted at all on the first call, and it was recalled on the second delivery, on the second award.

Q. It was included in the second requisition?

A. In the second requisition.

Q. And then received.

A. Then received. The quantities are identical, 143¾ pounds.

Q. In other words, the new requisition, then, that came through in August for that item fitted exactly the item which was not accepted in the prior inspection?

Mr. SCHLESINGER.—He didn't say that.

Mr. ALLEN.—Well, he said it in effect.

The COURT.—It already has been testified.

A. The same circumstances exist in regard to the one and one-eighth inch size.

Mr. ALLEN.—You mean by that, Mr. Spear, that in the original inspection of the award, or the first award, the Government did not accept?

A. One and one-eighth inch.

Q. One and one-eighth inch stuff, 36 pounds in quantity?

A. There is no record here of that in the first inspection call.

Q. That is, of the pounds?

A. Of the pounds, yes, sir, and the size also.

Q. Was that rejected, Mr. Spear, in the first inspection, under the first requisition?

A. It apparently was not billed at that time, was not referred to.

(Testimony of Ray Spear.)

Q. But was delivered, was it, as a matter of fact, on the first award?

A. I don't see they were ever awarded one and one-eighth on that award, wasn't delivered apparently—there apparently was no award made on the first delivery for the size one and one-eighth inch. [117—70]

Mr. ALLEN.—In other words, that was not accepted, you mean by that?

A. It was not accepted and doesn't appear.

Q. Well, does that quantity and same character of material appear in the second requisition which followed along in August?      A. Yes, sir, it is here.

Q. Is it identical in amount and quantity?

A. Well, it doesn't appear at all, sir, on this first—

A. It does not appear at all is my answer.

Mr. ALLEN.—That is, as to the quantity. Can you compare the next item, more hurriedly, if you can, Mr. Spear?

A. On the original award the item called for 200 pounds of one and one-quarter inch size. There was 215 pounds delivered.

Q. On which requisition, now?

A. On the first requisition. On the second requisition, in August, there appears an item for that same size, 44½ pounds of inch and a quarter.

Q. Can you figure out from those records as to whether or not that represents the residue or excess of that particular kind of pipe, or toban bronze, which was not accepted in the first instance?

A. It appears on the requisition—



(Testimony of Ray Spear.)

Mr. MORRIS.—We object, your Honor. That is not an answer to the question. He asked you if you could figure out from that.

The COURT.—He was answering from the requisition. Proceed.

Mr. MORRIS.—Exception.

A. No, I cannot reconcile those two quantities.

Mr. MORRIS.—What is the answer?

A. I cannot reconcile those two quantities.

[118—71]

Mr. ALLEN.—Well, how long, Mr. Spear, would it take you to figure those items out?

A. Quite a lot of data here.

Mr. ALLEN.—Mr. Spear, have you checked, at my request, the quantity and the size, and any dimensions which might be apparent by the requisitions you have before you, with reference to requisition number 649, and more particularly that part of excess delivery which was not accepted by the Government under that requisition, and comparing that excess in amount and quantity with the items called for in requisition number 207, the same being the new requisition? A. Yes, sir, I have.

Q. With what result?

A. I find that the excess quantities delivered under requisition 649 are the same quantities that now appear on this requisition of August 14.

Q. That is, 207?

A. 207, yes. And the quantities are identical with the excess deliveries on the previous requisition.

Mr. SCHLESINGER.—Mr. Spear, when you say

(Testimony of Ray Spear.)

August 14th, what year do you mean in every instance?

A. Of 1908, it is understood.

Mr. ALLEN.—I will not go into those items, your Honor, because it is a matter of cross-examination.

The COURT.—Very well.

Mr. ALLEN.—I think that on Saturday, in examining Mr. Spear, I was inadvertently stated as having taken an unfair position to the defendant and to counsel for defendant with reference to the repeating of the endorsements on the check No. 82, same being the sum of \$7,714.19, of date of May 26th, 1908, and counsel, [119—72] Mr. Schlesinger, suggested the endorsement there was his initials. I am perfectly willing the record shall show the same time I read it, I intended to do so, it isn't clear—

Mr. SCHLESINGER.—We don't regard the matter of sufficient importance to make any admission one way or the other. Your Honor please, at some stage of this case we should like to be heard on the admissibility of his check in evidence. We think probably the question will properly arise when the question is asked with respect to the time of delivery, and I don't want to discuss it now because it would take too much time.

Mr. ALLEN.—Pardon me; I wanted to clear the record at this time while this witness was on the stand, so I am making the offer now, your Honor, if they wish to do so they may add that explanation of Mr. Goldberg as made at that time, those are his initials attached to the word "Fowler." I can't

(Testimony of Ray Spear.)

make it out that way.

Mr. SCHLESINGER.—That was inadvertently used, the signature.

Mr. ALLEN.—Very well, I think that is all.

The COURT.—Do I understand this is offered now?

Mr. ALLEN.—No, your Honor, that has been offered in evidence and admitted. That is an old exhibit. That is all, your Honor.

Q. Mr. Spear, at the noon recess I think I was asking you, about the last question was the supply of the battleship fleet for six months, and you answered about six months' supply, that is right?

A. I think so, yes, sir.

Q. Now, it is a fact that the outfitting of a battleship for a cruise around the world was an unusual thing, was it not?

A. Very unusual; yes, sir. [120—73]

Q. And to successfully accomplish that undertaking to the satisfaction of the Department, with the force that you then had at your command, was remarkable, was it not?

A. Well, everybody worked pretty hard. I don't know whether you consider it remarkable.

Q. An extraordinary condition existed at the Puget Sound Navy Yard from the time you arrived there in January, 1908, until after the departure of the fleets, an extraordinary condition?

A. For that yard, yes, considering the facilities that they had at that yard.

Q. That is what I mean. I am coming to the other



(Testimony of Ray Spear.)

questions later on, but just this now. Now, at the time the Pacific Fleet arrived at the navy yard, and you were directed to supply them, I understood you to say before the noon adjournment that you objected to making immediate supplies for the reason that you knew the Atlantic Battleship Fleet would be at the yard shortly thereafter?

A. Yes, sir, that is correct.

Q. That is true. Now, having knowledge that the Pacific Fleet and the Atlantic Battleship Fleet was to be outfitted at the navy yard, immediately after your arrival there you started in energetically for the purpose of accumulating stowage, stores I mean, that is right, is it not? A. Yes, sir.

Q. When a requisition was received from the Pacific Fleet it called for the material on very short delivery, did it not, as a general thing?

A. Well, a ship is always asking for material as soon as she can get it.

Q. As soon as they can get it. It is a fact that when either a [121—74] battleship or a cruiser wants supplies or provisions, and I make that in its broadest sense, why, they want them delivered in very short order?

A. Yes, that is the general rule.

Q. That is the general rule. Now, during the time that the Pacific Fleet was there at the yard and the battleship fleet, with your small force you were continually in a rush to get supplies of every nature and description that was demanded?

A. We were pretty busy.

(Testimony of Ray Spear.)

Q. In your former trial you used the expression that you were in a rush.

Mr. ALLEN.—Just a moment, your Honor. He says in your former trial.

Mr. MORRIS.—Excuse me, Mr. Spear. I meant to say your evidence on the former trial you used the expression “rush.”

A. Well, we were very busy. You can use the word “rushed.”

Q. And that condition of affairs existed during all of the time that the Pacific Fleet and the Battleship Fleet were at the yard? A. Yes, sir.

Q. Now, you had both of these fleets at the yard at the same time, that is correct, is it not?

A. Well, not the entire fleet. Our share of the fleet was at the yard.

Q. I am directing your attention to the fleet you had there, that is what I mean. I understood you only had one division of the battleship fleet, and my questions are all limited to those you had at the navy yard, but those two fleets that had been assigned to the navy yard were there, and the battleship fleet sailed from the Puget Sound Navy Yard on or about June the 15th? [122—75]

A. My impression is it was somewhere about that time. I think they went away in scattering numbers.

Q. And leaving still at the navy yard the Pacific Fleet? A. Or a part of the Pacific Fleet.

Q. Yes, sir, a part of it. Then you had the battleship fleet and the Pacific Fleet, some of those vessels,

(Testimony of Ray Spear.)

at the Puget Sound Navy Yard from January or February, 1908, to June, 1908? A. Yes, sir.

Q. You fully and completely met every demand for supplies for each of said fleets, did you not?

A. Well, I heard no complaints.

Q. Sir?

A. I heard no complaints from the ships.

Q. Well, you can answer that question yes. It is a fact, is it not?

A. I think so. I haven't heard everybody express their opinion on it.

Q. Well, it is a fact, is it not, that your work was accomplished to the satisfaction of the Navy Department of the United States, to the satisfaction of the commanders of the respective fleets, or the admirals of the respective fleets, and the commanders of each and every ship? A. Yes, sir, I believe so.

Q. And after those ships had sailed from the Puget Sound Navy Yard you received from the Secretary of the Navy, or some high official in the navy, a letter of commendation commending you and your small force for the most remarkable work that they had done in outfitting those fleets?

A. We did get some such letter, yes, sir.

Q. Now, at that time this defendant, Edwin F. Meyer, was your [123—76] requisition clerk?

A. Yes, sir.

Q. Working from early morning until late at night, was he not? A. Yes, sir.

Q. And he was one of the most faithful, most trustworthy, and most valuable clerk that you had in your



(Testimony of Ray Spear.)

employ, was he not?

A. Yes, I always considered Mr. Meyer to be one of my best men.

Q. And it is a fact, is it not, without the services which this defendant rendered you at said time in assisting in outfitting that fleet you could not have done it?

A. Well, I wouldn't go so far as to say that, you know. People come and go in the United States Navy and they go along some way.

Q. Well, I will use this expression. In the former trial of this case you used, in answer to that question, you said that without him you would not have gotten along?

A. Well, that was possibly an exaggeration.

Q. But his services were inestimable to you at that time?

A. His services were of extreme value to us.

Q. Previous to your arrival at the Puget Sound Navy Yard you had been connected with the Navy Yard at Mare Island? A. Yes, sir.

Q. And, as you have testified before, you had been transferred up here on account of conditions that the Navy Department expected to exist, and immediately after you arrived at the Puget Sound Navy Yard from Mare Island you started in, for the purpose of putting the Puget Sound Navy Yard on an equal footing with Mare Island in regard to furnishing supplies for ships, did you not?

A. Yes, sir. [124—77]

Q. Then you adopted the usual procedure for se-

(Testimony of Ray Spear.)

curing such supplies?      A. Yes, sir.

Q. Mr. Spear, is it not a fact that at the time you assumed charge as storekeeper the storehouse of the Puget Sound Navy Yard was small and the amount of supplies then on hand inadequate to supply the anticipated demands of the Pacific Battleship Fleet?

A. The Atlantic Battleship Fleet I testified. You said Pacific. I think you meant Atlantic.

Q. The Atlantic Battleship Fleet.

A. They were very inadequate at that time.

Q. Very inadequate.

Mr. ALLEN.—Your Honor, for the purpose of shortening this examination, I will concede that the Navy Yard at Bremerton at this time, during this period of months, was very, very busy, your Honor, that Mr. Meyer worked very hard, and Paymaster Spear was very, very busy. We will concede all of that, if that is the purpose of the examination.

Mr. MORRIS.—And at that time you immediately started in to make an accumulation of stores?

A. Yes, sir.

Q. At the time you started in to make this accumulation of stores this defendant, Edwin F. Meyer, was your requisition clerk?      A. Yes, sir.

Q. You talked with the defendant Meyer relative to your intentions in respect to securing stores?

A. Naturally, yes, sir.

Q. Yes, sir, naturally you would. Do you remember the conversation that you had with Mr. Meyer relative to what he was to do in finding [125—78] out, or attempting to find out, the stores and supplies

(Testimony of Ray Spear.)

that would be needed?

A. I don't recall any specific conversation.

Q. You had a number of conversations with Mr. Meyer on that subject, did you not?

A. Oh, yes, it was practically daily.

Q. And each and every one of those conversations pertained to acquiring information as to the amount of stock then on hand, the demands that were liable to be made by the respective battleships and the Pacific Fleet, and so forth? A. Yes, sir.

Q. Now, a storekeeper in the Puget Sound Navy Yard, knowing that a fleet was to be outfitted, necessarily, in order that he might secure supplies needed, would anticipate the needs of the ship?

A. Yes, sir, he would have to.

Q. He would have to do that. And unless he did so anticipate he was liable to have the fleet on his hands and not having made sufficient provision for them? A. Yes, sir.

Q. And in a case of that kind he would be open to extreme censure? A. Yes, sir.

Q. For incompetency? A. Yes, sir.

Q. Now, I want to see if I can refresh your memory, Mr. Spear. Do you remember of instructing Mr. Meyer to take a ship allowance-book and make requisitions for the stock of such supplies as were constantly called for?

A. I think I do, yes, sir. I remember that we tried to use the [126—79] allowance-book as the basis of figuring possible needs.

Q. Now, explain to the jury what you mean by



(Testimony of Ray Spear.)

ship's allowance-book.

A. The ship is divided into several departments. There is the Equipment Department of the vessel, and the Construction and Repair Department, Steam Engineering Department and so forth, Navigator's Department. The Bureaus in Washington correspond with these departments on board the ship, did at that time, and each Bureau in the Navy Department gets out an allowance list of material. There are two classes of material, title "B" and title "Y." "B" are tools, articles that cannot be expended by use. Title "Y" articles are articles that are expended every day, coal-oil, waste, you are constantly using, and they are simply expendable by use. The allowance lists are those lists that are based on a six months' allowance; that is, the quantities indicated on title "Y" are for six months' allowance. In other words, an allowance list is merely an indication to the ship what the Department expects that department of the ship to get along with during a fixed period. They may not do it, but it is a matter for the Department to question.

Q. Mr. Spear, you had knowledge at least as early as January or February, 1908, that the Atlantic Battleship Fleet was to be at the Puget Sound Navy Yard for supplies?      A. Yes, sir.

Q. And with that knowledge in mind you did start in to accumulate these supplies that were liable to be called for by the respective ships, and those were supplies with which you had your conversation with the defendant just repeated?      A. Yes, sir.

(Testimony of Ray Spear.)

Q. Now, I want to direct your attention at this time to Plaintiff's Exhibit Number "12," which is a letter of date April 22d, 1908. [127—80] The requisition that is involved in this indictment, we will say, was prepared on the first of April, or twenty-two days previous to the date of this letter. On the first of April, 1908, you anticipated this battle-ship fleet to arrive at the Puget Sound Navy Yard?

A. Yes, sir.

Q. And for a number of days or weeks previous to the first of April, 1908, you had anticipated the arrival of said fleet? A. Yes, sir.

Q. You remember the contents of Plaintiff's Exhibit "12"? I will hand it to you and you can look at it. A. Yes, sir.

Q. Now, is it not a fact that previous to the date of writing the letter, April 22d, as shown by Plaintiff's Exhibit "12," that you had expected a condition of affairs to exist relative to the appearance of these certain ships?

A. Yes, sir, it was outlined in a general order.

Q. And, acting upon the belief that these particular ships were to arrive at the navy yard and be outfitted at the navy yard, you acted in accordance with that assumption in preparing your supplies?

A. Yes, sir.

Q. That is true. Now, something arose that caused you to address that letter to the Bureau at Washington?

A. Well, this is to the Commandant.

Q. To the Commandant. Now, you say to the

(Testimony of Ray Spear.)

Commandant, and to the Commandant where?

A. Navy Yard, Puget Sound.

Q. Navy Yard, Puget Sound. Now, will you kindly explain to this jury the reason why you addressed the communication as shown [128—81] by Plaintiff's Exhibit "12" to the Commandant of the Puget Sound Navy Yard?

A. Well, previous to writing this letter we had received information that the "Minnesota," "Ohio," "Missouri" and "Calgoa" would dock, and therefore take on their stores at the Navy Yard at Bremerton. About the time that I addressed this letter, or a day or two previous to this letter, as a matter of fact, it is given here April 15th, we received a telegram from the Bureau of Construction and Repair in Washington saying that the "Georgia" and "New Jersey," "Rhode Island" and "Virginia," would dock at Bremerton, and we had had no previous warning of the arrival of those particular ships, we didn't know we would have to have those ships up there or prepare for them.

Q. Now, right there just let me ask you a question while you are on that subject. You had up to that time, or up to the 22d of April, 1908, made provision for eight battleships, had you not?

A. Well, in a general way, we did.

Q. In a general way? A. Yes.

Q. Then you found out that there were four certain ships that were expected, or that you were expected to care for that were to be sent to the navy yard?



(Testimony of Ray Spear.)

A. Well, there were eight, as a matter of fact. We took eight ships.

Q. Yes, but these four ships you had made no provision for?

A. We had made no provision for the ships of the names there, the "Georgia," "Rhode Island," "Virginia,"—

Q. And if you were to furnish supplies for those ships you wanted to know the day particularly so you could go to work and accumulate your stores?  
[129—82]

A. Oh, no, that didn't make any difference. We were to get eight ships. We didn't know what eight ships they were, but in the meantime these ships had begun sending in their requisitions to us. We didn't know what they wanted. What I was after here was to get these particular ships to send in their requests. We had already prepared for eight ships. We didn't care what ships.

Q. Now, as I understand, if these four ships, of which you had no information, were to come to the navy yard and were to be outfitted by you, you wanted to find out the needs?

A. I wanted them to put in their requests.

Q. You wanted them to put in their requests, to make their application by requisition?

A. Yes, sir.

Q. That was all to that. But, previous to that time you had been acting on the assumption, and had been accumulating stores for the purpose of supplying the eight ships of the Atlantic Fleet that you

(Testimony of Ray Spear.)

knew were to arrive?      A. Yes, sir.

Q. Then it is a fact, Mr. Spear, that you were acting on the assumption that these battleships would arrive at the Puget Sound Navy Yard for supplies on or about the first of April, 1908?

A. I don't think quite as early as that. The first of May, I believe, or somewhere around in that neighborhood.

Q. I say, you anticipated that they would arrive?

A. I wasn't expecting them quite as early as that; I was expecting them along about the first of May.

Q. You misunderstand my question, then.

Mr. MORRIS.—I don't mean the date of the arrival of the ships, Mr. Spear, you misunderstand me. I mean that you were anticipating [130—83] the arrival of the battleships on or about the first of April, 1908?      A. No, sir, I was not.

Q. What I mean to explain to you is this, on or about the first of April, 1908, you had information that these battleships would arrive at the navy yard during the summer?      A. Yes, sir, we had that.

Q. You had that. And having that information on the first of April, you were preparing—oh, I see what you mean.

Q. (Continuing.) —to accumulate the stores?

A. Oh, I see what you mean. I understand now.

Q. That is true, is it not?

A. Yes, that is correct.

Q. And you had been so preparing for a number of weeks previous thereto?      A. Yes, sir.

Q. Now, Mr. Spear, is it not a fact that it was

(Testimony of Ray Spear.)

necessary for this defendant, in the course of his assistance to you in securing supplies, to order paints, oils, paint brushes, and so forth?

A. He prepared requisitions for those things, yes.

Q. Yes, sir. And these requisitions to which you have referred were for paints, oils, brushes, and so forth, used by whom, the ships?

A. Oh, they might be used by the ships, by yard departments, yes.

Q. It is a matter of fact, is it not, that you were compelled to supply, and did supply, a great quantity of oils, paints and brushes to the battleship fleet?

A. Well, I think that statement is generally correct, yes.

Q. Yes, sir. Now, in addition were you required to supply tools? A. Yes, sir. [131—84]

Q. Of every description almost?

A. Yes, sir. That is, you might say there is practically no item in the commercial world that is not carried at one of these navy yards.

Q. Mr. Spear, it was also necessary for you to provide clothing of every nature and description for the men on these respective ships? A. Yes, sir.

Q. That clothing consisted from the outer garments to the socks? A. Yes, sir.

Q. Caps and hats, and so forth. And it is also a fact that you were required to anticipate the amount of provisions the respective ships would require?

A. Yes, sir.

Q. There were from 500 to 900 men aboard the re-



(Testimony of Ray Spear.)

spective ships, probably average 750 or 800?

A. Yes. I will explain that, I think, for the benefit of the jury, that provisions can be rather readily ascertained for the reason a certain number of men can consume only a certain amount of provisions, and that supplies it. There is a fixed allowance, you know, by Congress.

Mr. RIDDELL.—You say there is a fixed allowance by Congress?

A. Yes.

Mr. MORRIS.—And if you were going to provision one battleship, of course, you would supply them with, we will say, pounds of flour; if one battleship would require 60,000 pounds of flour, why, ten battleships would require 600,000 pounds of flour for a certain time?

A. Yes, provided—

Q. That is the way you estimate? [132—85]

A. Provided all ships were equally supplied to start with.

Q. And if those ships would require that much flour for one month, they were going on a cruise for six months, then you would make your estimate sufficiently large, according to the length of time they would be on their cruise? A. Yes, sir.

Q. Mr. Spear, when you arrived at the Puget Sound Navy Yard do you remember where the storekeeper's place of business was located?

A. Yes, sir, on the second floor of the building used as the principal storehouse.

Q. And after you had completed supplying the

(Testimony of Ray Spear.)

Pacific or the Atlantic Battleship Fleet, shortly thereafter you removed from the old quarters into more commodious quarters? A. Yes, sir.

Q. Do you remember just how long after the battleship fleet left here?

A. Why, I think it was sometime during the early fall of 1908.

Q. Early fall of 1908. Probably within three months after the Atlantic Battleship Fleet had sailed? A. Something like that.

Q. Now, one of the first moves that you made, after you got rid of this battleship fleet, was to start in with the preparation of an index system?

A. I believe something like that was started about then.

Q. When you arrived at the Puget Sound Navy Yard there was practically no index system in existence? A. The records were very incomplete.

Q. The records were incomplete, and it was with difficulty that a particular article could be found in a record because it had [133—86] not been indexed, that is true?

A. Yes, that was true to a large extent.

Q. And you realized that that system could not long exist, and therefore you started in, just as soon as you got these fleets off of your hands, to build up an index system? A. Yes, sir.

Q. And you also, shortly after your arrival at the Puget Sound Navy Yard, requested the Department to furnish you additional help?

A. We were always calling for that.

(Testimony of Ray Spear.)

Q. You were calling for that, and the reason that you called for additional help at that time was because your working force in the Puget Sound Navy Yard was not sufficient to take care of the business?

A. Yes, sir, that is correct.

Q. And after the battleship fleet had left the Puget Sound Navy Yard, and after they had been cared for by your small force, you, later on, secured additional help? A. Yes, sir.

Q. In the person of one Mr. A. W. Barnes, who came there in the fall of 1908?

A. Well, I appointed Mr. Barnes myself as Paymaster's clerk, that is his official title, and I had the right to make that appointment.

Q. You made that appointment. But you made the appointment because his services were needed?

A. We wanted the services of a high-grade man there.

Q. And the reason you wanted the services of a high-grade man was because it was necessary, on account of the conditions that existed, the lack of help? [134—87] A. Yes, sir.

Q. In other words, previous to that time this defendant, Mr. Meyer, had been carrying the burden of work that was later placed upon Mr. Barnes' shoulders? A. Yes, sir.

Q. Now, the storeroom that you occupied at the Puget Sound Navy Yard from January, February, March, April, May and June, was small and you were greatly cramped for room?

A. The storeroom that I occupied? Are you



(Testimony of Ray Spear.)

speaking of my office or the storehouse that I occupied?

Q. I mean where the records and things were kept.

A. The office?

Q. Yes, sir.      A. Yes, that was very small.

Q. That was very small. And in that small room you had these folders that contained the respective requisitions and the record of each and every proceeding of like kind?      A. Yes, sir.

Q. Simply in there in numerical order?

A. Yes, sir.

Q. Mr. Spear, are you familiar with the zinc, or the kind of zinc that is mentioned in the indictment in this case?      A. Well, I know what it is used for.

Q. Boiler zinc?

A. Yes, sir, it is hung in boilers.

Q. Boiler zinc. Now, Mr. Spear, will you kindly tell the jury for what purpose boiler zinc was used at that time, the time of the date of this requisition?

A. Well, it is customary to hang slabs of zinc, and in this case they were put inside. They were cut in sizes 6 by 12 by  $\frac{1}{2}$  inch. [135—88] They either hung those on wires inside the boilers, or placed them in baskets inside the boiler, to allow the salt water to attack that instead of attacking the metal of the boiler. It preserves the boiler, in other words. They will be eaten away by galvanic action if you don't have something of that sort in them.

Q. It is boiler zinc to which you referred, was it?

A. Yes, sir.

Q. The same kind of zinc that is mentioned in this

(Testimony of Ray Spear.)

indictment?      A. Yes, sir, I believe so.

Q. Now, Mr. Spear, zinc of that kind was used by all battleships and all cruisers of the Navy, was it not?      A. Yes, sir.

Q. It was a supply that the ships were compelled to have at all times?      A. Yes, sir.

Q. Just as much of a necessity as flour or meat?

A. Yes, sir.

Q. Probably more so. Now, this zinc was used for what purpose on the ship, do you know, just in a general way?      A. This what?

Q. The zinc for the boilers, and so forth?

A. I thought I explained that.

Q. I didn't hear you.

A. I told the jury it was hung inside of the boilers.

Q. That is right. Now, Mr. Spear, are you able to state about the average amount of zinc that would be needed to supply a battleship, say, for six months?

A. Well, every three or four thousand pounds on board each ship would be considered an ample stock for an individual ship to carry. [136—89]

Q. Let me ask you this question and maybe it will refresh your memory. You were familiar with the battleship "Nebraska"?

A. Yes, sir, I have seen her a great many times.

Q. The battleship "Nebraska" was lying in front of the Puget Sound Navy Yard during the winter or spring of 1907?

A. Well, I assume that. I wasn't there then, but I understand that.

Q. I mean 1908.

(Testimony of Ray Spear.)

A. Well, she left with the fleet, but she had been there during the spring of 1908.

Q. Now, as a matter of fact, the "Nebraska" came over to the Puget Sound Navy Yard and was furnished by you and your assistants supplies for her crew? A. Yes, sir.

Q. And at that time you were outfitting the battleship "Nebraska," knowing that she was to become a member of the Atlantic Fleet, and she did become a member of the Atlantic Fleet, and sail with them, that is true, is it not? A. Yes, sir.

Q. Now, directing your attention to Plaintiff's Exhibit "8," being a stock card, I believe, I will ask you if you can tell this jury from said stock card how many pounds of boiler zinc you furnished to the "Nebraska" at said time.

A. It shows here that the "Nebraska" was furnished on the 18th day of April, 8,000.

Q. 8,000 pounds?

A. Yes, sir. I would like to explain that issue, however. The reason for the probably larger quantity on account of that ship being a new ship, and her boilers—I have forgotten how many, eighteen or twenty boilers, would have to be completely outfitted [137—90] with these particular zincs, which would, after having done so, would leave her with a normal quantity of boiler zinc on hand for supply purposes. You understand, she—

Q. Now, Mr. Spear, again directing your attention to Plaintiff's Exhibit "8," I will ask you if you can tell from said exhibit whether or not you furnished



(Testimony of Ray Spear.)

to any other ship, battleship, any boiler zinc?

A. Oh, we furnished all the ships that came there to the yard, I guess.

Q. I know that, I am satisfied of that.

A. There is the "Washington" took 2,000 pounds, the "California" took 5,000, the "Colorado"—

Q. Now, the "California," directing your attention to the "California." The "California" at that time was an older ship, was she not?

A. She was, yes, she was quite old.

Q. She had been in the service a long time?

A. Two or three years, I think, at that time.

Q. And the "Nebraska" was a new ship just off of Moran's ways here probably and over at the navy yard, is that what you want to convey?

A. Yes, sir.

Q. That is the condition? A. Yes, sir.

Q. Now, do you find any other supply to battleships there?

A. The "Missouri" took 1500, I see an issue here of 80 pounds to the "Wisconsin." The "Wisconsin" then took 650 pounds on another requisition. The "Rhode Island" took 2,000 pounds. The "N. J.," I presume that stands for "New Jersey,"—

Mr. ALLEN.—Mention the date. [138—91]

A. (Continuing.) That is in May and June, 1908.

Mr. MORRIS.—You had no knowledge previous—are you through, Mr. Spear?

A. Yes, unless you want me to complete that.

The COURT.—How much?

A. I think it was two thousand and eighty pounds

(Testimony of Ray Spear.)

there, the "New Jersey" 2,080 pounds.

Mr. MORRIS.—Now, some of these ships, when they arrived at the Puget Sound Navy Yard, that is, the battleship fleet, had some supplies and provisions probably on the Atlantic Coast?

A. Oh, they all had some left, undoubtedly.

Q. And you were not able to deliver to them as many supplies as you anticipated they would take previous to their arrival?

A. Well, yes, that is true.

Q. That is true?

A. They had more supplies on hand than we expected to find.

Q. They had more supplies on board than you expected. You had every reason to expect you would furnish the Atlantic Battleship Fleet more supplies than they took. You did not know they had laid in supplies on the Atlantic Coast?

A. Somewhere else. That argument works both ways.

Q. I am just asking you to answer the question.

Mr. ALLEN.—He is answering it.

A. (Continuing.) They took a great many more of some certain items than we anticipated; they also took a great deal less in some of them.

Mr. MORRIS.—Yes, that is a natural condition. Now, this zinc that was furnished to the "Nebraska" while she was lying over there at the Puget Sound Navy Yard was supplied April 18, 1908? [139—92]

A. The "Nebraska," did you say?

Q. Yes, sir.

(Testimony of Ray Spear.)

A. I believe that was the date, yes, sir.

Q. And those supplies were furnished, that is, the zinc was furnished to the "Nebraska" by you and your assistants, among whom was the defendant Meyer, about six or eight weeks previous to the arrival of the Atlantic Fleet at the Puget Sound Navy Yard?

A. It was about four weeks there apparently.

Q. Well, about four weeks?      A. Yes.

Q. The time is immaterial. It was after that sometime. Now, there were eight ships in the battleship fleet?      A. Our share of it.

Q. Your share of the ships that you expected to outfit with supplies were one-half of the entire Atlantic Fleet, or eight vessels?      A. Yes, sir.

Q. Now, you read from Plaintiff's Exhibit "A," that is the stock card, the names of several vessels to whom you had issued zinc, or supplied zinc, and some of those vessels, or the most of them, I believe, were members of what we call the Pacific Fleet?

A. Well, I didn't pay much attention when I read, I merely ran down the list.

Q. Well, that is a fact, is it not?

A. I think it was about evenly divided.

Q. Well, he says it is about evenly divided, and I think he is right.

Mr. MORRIS.—And these ships of the Pacific Fleet were the ships that you did not wish to immediately supply in January, February, [140—93] March?



(Testimony of Ray Spear.)

A. Sometime I think after February that I made that protest.

Q. Now, Mr. Spear, I desire to direct your attention to requisition 438, which I understand to be the files of the storekeeper pertaining to the zinc mentioned in the indictment in this case.

A. You want me to refer to it?

Q. I say, I understand that to be true. I desire to direct your attention now to a question. You signed that requisition, I understood you to state?

A. Yes, sir.

Q. And at the time you signed it you knew that it called for 50,000 pounds of boiler zinc?

A. Yes, I have no doubt of that.

Q. No doubt of it at all. Now, Mr. Spear, in all of your years of experience as a storekeeper you never knew of such zinc as mentioned or requisitioned for in this case to have been purchased for as low as five cents per pound, have you?

A. The zinc purchased for five cents a pound?

Q. Yes.

A. No, I can't recall any prices at all; I wouldn't remember them.

Q. The requisition showed that it was for 50,000 pounds of zinc, boiler zinc? A. I believe so.

Q. And it also showed that it was to be purchased at an estimated price of 12½ cents?

A. I think that was the figure quoted; I am just answering from memory here.

Q. Well, that was on the requisition at the time you signed it, was it not? [141—94]

(Testimony of Ray Spear.)

A. The estimated price was on the requisition.

Q. Then if the price of 12½ cents, the estimated price, was on the requisition, and the number of pounds, 50,000, why, any person would know by a glance at the number of pounds and the estimated price per pound, at 12½ cents, that that amount of zinc would cost more than \$625, would they not?

A. Well, you would think so, yes, if you had that paper to examine.

Q. No question about it. Now, I understood you to say in your direct examination that you had no recollection, at the time you were testifying, that was last Saturday, of having signed this requisition?

A. No, I don't remember that in relation to any hundreds of other requisitions that I signed.

Q. That is, there might be brought into this courtroom probably two or three thousand requisitions that you signed while you were there at the Puget Sound Navy Yard, and if you were asked, in the presence of this jury, if that was your signature you would answer yes, and if you were asked if you remember of signing it, or that particular transaction, you would answer that you did not remember the transaction, would you not?

A. Unless there was something that had brought that particular transaction to my notice.

Q. Now, answer my question, Mr. Spear. I asked you a question, and that would be true, would it not?

A. In the main that would be true, but I will qualify that by saying there might be some requisition

(Testimony of Ray Spear.)

in those two or three thousand that you mention that I would recall.

Q. Now, Mr. Spear, there are exceptions to all rules, of course, [142—95] and there might be, possibly be an exception in that matter? A. Yes.

Q. But if such requisition should appear it would be because it was a transaction that took place between yourself and some person at that time that attracted your attention to it? A. Yes.

Q. And that would be the only reason you would have? A. That is all.

Q. You would be compelled to answer, in the presence of this jury, that “At the present time I have no recollection of signing that requisition, although it is my signature”? A. Yes, that is a fact.

Q. Now, you were also asked this question this morning by Mr. Allen, if at the present time you had any recollection of signing said requisition when it contained the time limit as is specified thereon, to which you answered that at the present time you had no recollection, is that right? A. Yes, sir.

Q. And the same questions I asked you awhile ago in regard to this other transaction would be true in regard to that, that is right, is it not? A. Yes.

Q. I think that you, on Saturday, I may be wrong, if I am you correct me, I think that you gave as a reason why you did not remember signing that requisition was the amount involved being large, \$6,250?

Mr. ALLEN.—I submit, your Honor, he did not state.



(Testimony of Ray Spear.)

A. No.

Mr. MORRIS.—You didn't so testify? [143—96]

A. I probably didn't recollect it, because the amount—

Q. No, I understand—

Mr. RIDDELL.—Let him answer it.

A. I gave as my reason I didn't remember it because the amount in fact was very low, because when I signed that I assumed it was only \$625, from all the record that has been presented here to me.

Mr. MORRIS.—Well, I understood you to state awhile ago you saw there was 50,000 pounds of zinc that was on that requisition, and that it was to be purchased, the estimated purchase price was 12½ cents? A. Yes.

Q. And you, of course, incidentally would know, if you noticed six hundred and twenty-five on there, that it was a mistake, would you not?

A. No, we are not concerned very much about that.

Q. I am not asking you about being concerned.

A. It had been the practice of general storekeepers, myself in particular, and I think you will find it with every Government employee, that in signing papers that come to his desk he is concerned more with the money value than anything else, I know I am, regarding stores. And my habit has been, in signing requisitions, as the first copy which I sign does not contain any money values at all, I merely slide the first copy up, glance at the total estimate on that requisition, and, if it is not startling, to sign it, if it is nothing that has no appreciable amount.

(Testimony of Ray Spear.)

Q. Now, did I understand you to say that the reason that you did not remember—

A. Well, I think possibly that was the reason. I didn't say it [144—97] was the actual reason. I don't recollect the requisition at all.

Q. You don't recollect it at all?

A. No, sir, I do not.

Q. Well, that is all.

A. I gave as my reason here, perhaps, I didn't recollect it.

Q. But have you any recollection at the present time of having signed a requisition within either a few days before or a few days after the first of April, 1908, in which the amount involved was \$8,000, or thereabouts? A. No, sir.

Q. And it was for zinc?

A. No, sir, I don't remember that.

Q. You would not say that you did not sign such a requisition as that? A. No, I would not.

Q. Sir? A. No, I would not say that I did not.

Q. And if a requisition of that kind was presented to you now you would answer that you have no recollection of signing it, but that your signature appeared there and that you did sign it? A. Yes, sir.

Q. And that is true as far as this transaction is concerned? A. Yes, sir.

Q. Now, Mr. Spear, after this requisition for this boiler zinc was signed by you, tell the jury where that requisition was sent, if any place.

A. It was sent to the Bureau of Supplies and Accounts, Navy Department, Washington, for further

(Testimony of Ray Spear.)

action. Of course, there is the different routings of the various copies. [145—98]

Q. Directing your attention to Plaintiff's Exhibit Number "4," which is requisition 438, I will ask you if you are able to state from said exhibit—

Mr. ALLEN.—What is the number of the requisition?

The WITNESS.—438.

Mr. MORRIS.—The photographic copies in that folder?

A. No, sir, I was just going to ask for it, because I can't identify anything from this.

Q. (Handing papers to witness.) I understand the photographic copies belong in exhibit "4." That is exhibit "4," though, that he holds in his hand.

A. This is marked exhibit "5."

Q. "5," is it? Now, immediately after this requisition in question for this 50,000 pounds, of zinc was prepared in your office and signed by you it first went to the Paymaster General? A. Yes, sir.

Q. Of the Navy? A. Yes, sir.

Q. Now, the Paymaster General of the Navy was Chief of the Bureau of Supplies and Accounts?

A. Yes, sir.

Q. And as Chief of the Bureau of Supplies and Accounts he was supposed to have, and did have, supervision, the highest authority, over the purchases of all supplies of every nature and description for the navy of the country?

A. Well, there is qualifications to that.



(Testimony of Ray Spear.)

Q. Well, then, state the qualifications, will you, please?

A. The Secretary of the Navy reserves the right to modify or [146—99] change the directions of the Paymaster General at any time, as he has done in this case.

Q. As he has done in that case. Now, I am coming up to that. Well, then, will you tell this jury what the duties of the Paymaster General of the Navy were in reference to this requisition as shown by the photographic copies, being Plaintiff's Exhibit "5"?

Mr. MORRIS.—Read the question.

Q. (Question repeated.)

A. Well, as this requisition was in excess of \$500 it required action by the Secretary of the Navy himself before the purchases without advertisement could be carried out.

Q. And if it was in excess of \$500 only by a hundred and twenty-five dollars the same condition would exist, would it not? A. Yes, sir.

Q. If this requisition called for \$6,250 or for \$625, it would be just the same, as far as the procedure was concerned? A. Yes, sir.

Q. Now, is it not a fact, from the record, that is, Plaintiff's Exhibit "5," that after said requisition reached the Paymaster General of the Navy it was referred by him to the Secretary of the Navy?

A. Yes, sir, it bears their stamp here (showing).

Cross-examination (Resumed).

(By Mr. MORRIS.)

Q. Mr. Spear, I wish you would explain to the jury

(Testimony of Ray Spear.)

the application and meaning of the word “advertisement” as used by you in your direct examination. Just speak up so the jury can hear.

A. Advertisement, as we refer to it in the Naval Service in the purchase of supplies, means publication by advertisement in one [147—100] of the daily papers, one or more of the daily papers.

Q. Is it not a fact, Mr. Spear, that when you refer to advertisements, as we have in this particular instance, that it means that the Department at Washington prepares printed proposals and mails them broadcast throughout the United States to the known dealers?

A. Well, that is also done, but I don’t believe that is the meaning of the word “advertisement.”

Q. I asked you the question if that is not what it means.

A. No, sir, I don’t understand it as such. That is possibly one way of advertising that particular transaction, but that is not the meaning of the word.

Q. That is what I am talking about, this particular transaction. I limit it to this question.

Mr. ALLEN.—I submit he may be permitted to answer the question.

A. That is not my understanding of the term “advertisement.”

Mr. MORRIS.—That is, you refer to it now as a general term, “advertisement”?

A. I am referring to it as it appears on the face of that requisition, that is in question.

Q. Well, now, I am asking you—there was no ad-

(Testimony of Ray Spear.)

vertisement on this requisition, was there?

A. The word "advertisement" appears on the face of that requisition, in which we request that advertisement be waived.

Q. You requested that it be waived?

A. Yes, sir.

Q. But now going back, if this particular requisition had been advertised, in the meaning of advertisement as applicable to this transaction, it would have meant that the Department at Washington would prepare printed proposals and circulate them [148—101] throughout the country to the known dealers. A. Well, do that in any purchase.

Q. Answer my question, Mr. Spear.

A. No, it doesn't mean that at all.

Q. You said a moment ago, I understood you, that in this particular instance it did mean that. Now, what do you mean by that?

A. I said a minute ago that advertisement, according to naval understanding and my understanding, is the publication of a printed notice in the daily paper, not the sending out of proposals, as you suggest there.

Q. What did you mean when you said advertisements with reference to this particular transaction?

A. Well, sending out these printed proposals that you speak about would be one way of advertising to a vast number of bidders that the Government was in the market for certain supplies. It might be looked upon as one form of advertising, but that is not the meaning of the word "advertisement" as it



(Testimony of Ray Spear.)

appears on our requisitions. I think it is a question of interpretation a good deal any way.

Q. Sir?

A. I think that is a question of interpretation.

Q. Well, we believe that we have the rules and regulations prescribed, and I simply want to test your memory on that subject, is all. (Handing paper to witness.) Directing your attention now especially to Plaintiff's Exhibit "5," that is the photographic copy of the requisition in question. Now, that requisition, or the photographic copy of that exhibit, does not waive advertisement, or does waive advertisement, but does not mean the waiving of legitimate [149—102] competition, does it?

A. Never.

Q. Sir?      A. Never.

Q. There is nothing on said exhibit that waives legitimate competition?      A. Nothing at all.

Q. Sir?      A. Nothing at all.

A. Nothing at all to waive competition.

Mr. MORRIS.—Now, suppose, Mr. Spear, that this requisition had been sent to the Bureau at Washington, and by the Bureau at Washington advertised, it would have required from three to four, five or six months to have received that zinc at the Puget Sound Navy Yard, would it not? Now, say yes or no to that.

A. We might expect it to take at least three months; I think hardly as long as six months.

Mr. MORRIS.—All right, sir. We will take it at three months. I understood you to testify on yester-

(Testimony of Ray Spear.)

day that the Atlantic Battleship Fleet, or some part thereof, arrived at the Puget Sound Navy Yard in May of 1908? A. Yes, sir, that is correct.

Q. Speak up.

A. You were making a statement, as I understood it.

Q. I am asking you if that is a fact.

A. That is a fact.

Q. This requisition calling for this 50,000 pounds of zinc was signed by you on or about the first of April, 1908? A. That is correct. [150—103]

Q. It is a fact, is it not, as shown by the records in this case, that fifty odd thousand pounds of zinc was requisitioned for along in December, I believe, of 1907? A. Yes, sir.

Q. And that zinc was not delivered. That zinc was to be supplied by the Navy Department at Washington, that is, the bids were to be called for by the Navy Department at Washington? A. Yes, sir.

Q. And be advertised, as you have suggested, we will say, for the purpose of the question, that zinc was not delivered to the Puget Sound Navy Yard until some three or four months after the requisition was issued; is that not true?

A. The exact date I don't remember.

Q. But, I say, that is about it, approximately?

A. Well, I think so, without knowing—

Q. I am not going to take up the time of the Court to examine those things specifically now.

A. Yes, I think that is approximately correct.

Q. I direct your attention again to Plaintiff's Ex-

(Testimony of Ray Spear.)

hibit "8" and ask you to examine same and see if you can state to the jury the date of the requisition for the zinc about which we have just been speaking, and the date of the delivery to the Puget Sound Navy Yard.

A. It appears here that on the 18th of March, 1908, there was a delivery of approximately 50,000 pounds, that is, on the 18th day of March.

Mr. MORRIS.—Then, if that zinc was called for in December it would be the remaining portion of December, January, February and up to that time in March? [151—104] A. Yes, sir.

Q. And at the time that the requisition in question was issued you anticipated the Pacific Squadron and the Atlantic Battleship Fleet?

A. Now, which requisition?

Q. You were not at the yard when that requisition was called for? A. No, sir.

Q. But, I say, it was anticipated that the Pacific Fleet and the Atlantic Battleship Fleet would be at the Puget Sound Navy Yard within the course of six months?

A. Well, I don't know whether that was known up there at the navy yard when that requisition was started.

Q. That may be a fact, though, as far as you know?

A. It is possible.

Q. And it is very probable that was the fact, is it not? A. Well, I can't answer to that, sir.

Q. Can't you answer as an expert the probability of such a condition as that existing?



(Testimony of Ray Spear.)

A. I don't know what information or instructions had been issued prior to my arrival up there.

Q. I am not asking you that; I am asking you if it is not probable, from your experience.

A. I cannot answer that; I do not know what instructions had been issued to the General Storekeeper at Bremerton before my arrival.

Mr. MORRIS.—Now, Mr. Spear, listen to my question. I asked you if it is not probable—I want you to answer as an expert in this matter—if that requisition was not issued in anticipation of these fleets that were coming. [152—105]

A. Possibly in anticipation of the Pacific Fleet; I do not know about the Atlantic Fleet.

Q. All right, sir. You don't know about the Atlantic. All right. But is it not a fact that it is very probable that it was issued in anticipation of both the Pacific Fleet and the Atlantic Fleet?

A. I said I don't know.

Q. Mr. Spear, in the course of your examination by the District Attorney I heard you use the word "proposal" a good many times. I would like you to state, so that we can all understand, what you mean by the word "proposal" as applicable to this transaction only.

A. Proposals, as we understand it, are blank forms used by purchasing pay officers in sending out their requests to firms to bid on certain classes of items of material.

Q. Yes, sir. Now, a proposal originates with the Purchasing Paymaster, does it not?

(Testimony of Ray Spear.)

A. The blank proposal does, yes, sir.

Q. Yes?      A. Yes, sir.

Q. The proposal that was sent out by the Purchasing Pay Officer originated, not in the storekeeper's office at Bremerton, but in the Paymaster's office here in the city of Seattle, did it not?

A. That is correct.

Q. This defendant Meyer's duties did not require him to send out that proposal?      A. No, sir.

Q. A proposal was a request upon the merchant to whom it was addressed to come in and bid, if they so desired, upon [153—106] this quantity of zinc that was wanted?      A. That is correct.

Q. That is right, is it not?      A. Yes, sir.

Q. And the defendant Meyer's duties were not connected with that service in any respect?

A. No, sir.

Q. Now, while we are on that subject, so that we may all understand as we proceed, is it not a fact that at the time these proposals were sent out that it is the duty of the Paymaster to designate thereon the time when the Paymaster is to receive from the merchant said proposals?      A. Yes, sir.

Q. And after said proposals are received by the Paymaster it is his duty to open those proposals in public?      A. I believe that is the custom, sir.

Q. Yes, sir. And it is further his duty to award the contract to the lowest acceptable bidder?

A. Yes, sir, that is correct.

Q. And that was the condition that existed at the time this requisition, as shown by Plaintiff's Exhibit

(Testimony of Ray Spear.)

Number "5," was issued? Say yes or no.

A. So far as I know. You know I am testifying to something I have no personal knowledge of now.

Q. You are testifying here as an expert, and you know these questions to be true?

A. You are confining me to a certain fact here under certain specific cases.

Q. Now, when the Paymaster accepts a bid then he issues what is known as an award? [154—107]

A. Yes, sir.

Q. That is, he awards the contract to the successful bidder? A. Yes, sir.

Q. The person who has put in a successful proposal? A. Yes, sir, that is correct.

Q. I want to call your attention again to Plaintiff's Exhibit "5" and ask you if it is not stated thereon that delivery was to be made within fifteen days after the award, or notification of the award.

A. It seems to be obliterated here, but I think it is fifteen days, as nearly as I can make it out. The stamp seems to be placed right over it.

Q. You testified in your direct evidence fifteen days.

A. Did I, sir? Well, I may have taken that information from one of the other copies.

Q. Well, let us see if we have got a copy that is better than that. A. I believe it is fifteen days.

Q. Fifteen days. Now, that is fifteen days after the award had been made? A. Yes, sir.

Q. That means fifteen days after the Paymaster's office, after the Paymaster of the United States Navy



(Testimony of Ray Spear.)

had awarded that contract to the successful bidder, does it not?      A. Yes, sir.

Q. And it means absolutely nothing else, does it?

A. That is correct.

Q. Do you know the location of the important zinc manufacturing companies of the United States?

A. No, sir, I do not.      [155—108]

Q. They are in the middle west, are they not?

A. Well, I said I didn't know, sir; I really don't know anything about it.

Q. Did you ever order supplies during your life as a storekeeper?      A. Yes, sir.

Q. From a large manufacturing company of zinc in the State of Illinois?

A. I know of the firm at La Salle, sir.

Q. Suppose this contract had been awarded to some firm in the State of Illinois by the Paymaster, could they not have delivered that zinc to the Puget Sound Navy Yard within fifteen days after they had been notified they had received an award?

A. Yes, sir, I think they could.

Q. You think they could. There is absolutely no question in your mind about that, is there?

A. Well, I know of a case where it was done in less time than that.

Q. Than the fifteen days? Now, Mr. Spear, as we travel along there, the custom in the Navy Pay Office was always made sufficiently liberal—

A. I didn't catch the first part.

Q. (Question repeated.) —so that the Purchasing Pay Officer might purchase within the bounds of

(Testimony of Ray Spear.)

that estimate, or ten per cent above? A. Yes, sir.

Q. That is true, is it not? A. Yes, sir.

Q. And one of the principal objects of making the estimate liberal was in order that the Paymaster would probably be able [156—109] to secure bids from the supply men within that estimate?

A. Yes, sir, that is correct.

Q. And if an estimate was made too small, then the purchasing pay office, being unable to purchase said supplies within that amount, would direct that subject back again to your office, the storekeeper's office, in which the requisition originated?

A. That is correct.

Q. That is true, isn't it? A. Yes, sir.

Q. And during your service as Paymaster, when this defendant, Edwin F. Meyer, was working under you, on several instances he placed the estimate on certain articles too low and you called his attention to it, did you not? A. That is correct.

Q. Yes, sir. Now, sir, suppose that 50,000 pounds of zinc was to be requisitioned for a fleet that was to make a cruise around the world, or a cruise for six months, and the estimate for that zinc had been small and a bidder may not have been secured in the market, this fleet would have been held or compelled to sail without the zinc, would it not?

A. Well hardly—I don't believe that it would have caused that inconvenience to the fleet.

Mr. MORRIS.—Well, tell the jury what inconvenience it would have caused them.

A. It would have caused some slight delay on the

(Testimony of Ray Spear.)

part of our office in rearranging the requisition or increasing the estimate.

Q. Then, sir, it would have caused that unquestionably, would it [157—110] not?

A. It would have caused a certain amount of inconvenience.

Q. Then you would have been compelled to re-requisition for that article, would you not?

A. Yes, sir.

Q. You would have been compelled to send it to the Navy Department of the United States at Washington, would you not?

A. Well, we could have secured their approval to a change in the estimate by telegraph, sir.

Q. Yes, you could have done that, but you would have to lay before the Department all these facts, would you not? A. Yes, we would have to.

Q. That would necessitate a great delay, would it not? A. Some delay.

Q. Then, after you had the sanction of the Navy Department, you would be compelled to again take up with the Paymaster the question of the purchase, would you not?

A. He would have to issue new proposals.

Q. New proposals. And time for those proposals to have been received would have had to have been made? A. Yes, sir.

Q. And then the award made? A. Yes, sir.

Q. And then the delivery of the goods. All of those transactions would have had to have been gone through again? A. Yes, sir.



(Testimony of Ray Spear.)

Q. Now, referring again to the Paymaster's Office, it is a fact, is it not, that the Paymaster of the Puget Sound Navy Yard, and the highest officer in the United States Navy at Washington, was not controlled by the estimates that are placed [158—111] upon the requisitions, but are supposed to go out in the market and buy these goods as cheaply as they can? A. That is correct.

Q. That is true. Mr. Spear, at the time that you were at the Puget Sound Navy Yard as Storekeeper, and especially at the time involved in this requisition, Mr. Orr, Paymaster Orr, was then in charge of the Paymaster's Office here in the city of Seattle, was he? A. Yes, sir.

Q. He was a bonded officer of the United States Government? A. Yes, sir.

Q. Now, Mr. Spear, I desire to direct your attention to the inspection, and shall be limiting it to this zinc transaction.

Mr. MORRIS.—Mr. Spear, I want to call your attention, I think, to Plaintiff's Exhibit Number "4." That is another photograph copy (handing papers to witness). Does said exhibit show who the inspecting officers were of that particular zinc in question?

A. Yes, sir.

Q. Now, Mr. Spear, it is a fact, is it not, that after the award has been made by the Paymaster, in the usual course of time this zinc was delivered, or in the ordinary course of procedure this zinc was delivered at the Puget Sound Navy Yard? A. Yes, sir.

Q. After the zinc arrived at the Puget Sound Navy

(Testimony of Ray Spear.)

Yard there was issued a call for inspection; is that right?     A. Yes, sir.

Q. That call for inspection was a written notice to *the* inspect this zinc, that the zinc was there and for them to inspect it?     A. Yes, sir. [159—112]

Q. That is right, is it not?

A. That is correct.

Q. Did this defendant, Edwin F. Meyer, have anything to do with the inspection of that zinc?

A. No other than merely see the clerk whose duty it was to get it out promptly.

Q. That is no part of *these* inspection?

A. That is—

Q. That is simply a notice to the inspectors to inspect?     A. Yes, sir, that is all.

Q. My question was, did this defendant Meyer have anything to do with the inspection of that zinc?

A. With the actual physical inspection of it, he did not.

Q. That is what I am talking about. He had not?

A. No, sir.

Q. Plaintiff's Exhibit "4" shows that Captain Stacy Potts was one of the inspectors, does it not?

A. Senior member, yes, sir.

Q. State to this jury who Captain Stacy Potts is, if you know.

A. He is now a commander retired.

Q. What position did he occupy at the time of the inspection, as shown by that exhibit?

A. He was the engineering officer of the yard, Navy Yard, Bremerton.

(Testimony of Ray Spear.)

Q. When you speak of engineering officer, explain to the jury what you mean by engineering officer?

A. He is the officer in charge of the Steam Engineering Department of the yard. He has cognizance over repairs to boilers, and ships, and any machinery operated by steam. [160—113]

Q. He was a captain in the United States Navy?

A. He was at that time, yes, sir.

Q. Yes, sir, at that time. Now, there is another name that appears upon said inspection, Lieutenant Commander Hayes; is that right? A. Yes, sir.

Q. Now, what were Lieutenant Commander Hayes' duties at the Puget Sound Navy Yard at the time of that inspection?

A. He was the Equipment Officer of the yard.

Q. Equipment? A. Yes, sir.

Q. And you mean by that what?

A. He had charge of that class of material that related to the equipment of the ship, rigging, sails, flags and electrical material, that is, electrical machinery. Electrical machinery does not come under the Engineering Officer, it did not at that time.

Q. And these articles which you have just mentioned are some of the duties that this defendant Meyer was presumed to perform in issuing requisitions for?

A. I don't understand that question.

Q. (Question repeated.) That is, when such articles as you have just mentioned were called for the defendant Meyer was required to issue requisitions for those?



(Testimony of Ray Spear.)

A. Yes, sir, that is correct. I didn't understand.

Q. Now, while we are on that subject there, permit me to deviate just a moment. Is it not a fact that at the time this zinc requisition was issued by the defendant Meyer, and previous thereto, and subsequent thereto, that the Engineering Department of the Puget Sound Navy Yard also issued requisitions [161—114] for zinc?

A. Yes, sir, they could originate a requisition.

Q. They could originate one? A. Yes, sir.

Q. Then, as far as you know, they did originate this, speaking from memory, now? A. Yes, sir.

Q. And is it not a fact that after originating the requisitions they placed upon said requisitions the estimated cost? A. Yes, sir.

Q. And those requisitions coming from the Engineering Department were separate and distinct from the duties of this defendant Meyer thereto?

A. That is entirely distinct. If you will allow me, I will explain a feature of that that I think will make the matter entirely clear to the jury.

Q. I have no objection to you explaining it.

A. The different heads of the Yard Department cannot originate, or never did originate, a requisition for stock. They could originate a requisition for material that was needed for a specific job that they had in sight, but they could not originate a requisition under Naval Supply Fund for stock.

Q. But the distinction that you make is simply this: They had the same authority and the same

(Testimony of Ray Spear.)

power to requisition for stock within their limit as this defendant had to requisition for stock for any other purpose.

A. Not for stock, for the job that they had in sight.

Q. For what?

A. They could requisition for material to cover a specific job. [162—115]

Q. Yes. A. The work being in sight.

Q. In other words, they had that authority, and they usurped it, if they had a job that required the use of 5,000 pounds of zinc they had a right to requisition for 5,000 pounds of zinc and place upon said requisition the estimated cost thereof?

A. Provided we didn't have it in stock, yes, sir.

Q. Provided you didn't have it in stock?

A. Yes. They couldn't requisition for anything if we had it in the storehouse.

Q. But they had the authority to requisition, if you did not have it in stock? A. Yes, sir, that is right.

Q. And, as a matter of fact, the records of the Puget Sound Storekeeper's Office shows in a great many instances they did requisition for zinc and placed upon said requisition the estimated cost thereof? A. That is possibly correct, sir.

Q. Yes, sir. This defendant Meyer had absolutely nothing to do with the physical inspection of the zinc in question, had he?

A. Nothing at all, sir.

Q. These inspecting officers to whom you refer were appointed by whom?

A. By the Commandant of the yard.

(Testimony of Ray Spear.)

Q. The Commandant of the Puget Sound Navy Yard?     A. Yes, sir.

Q. The highest officer in that yard?

A. Yes, sir. [163—116]

Q. That same Commandant at the yard now that was there when you were there?

A. Oh, we have had three or four, sir, since then.

Q. Directing your attention to Plaintiff's Exhibit "5," photograph copy of the requisition in question, is it not a fact that said requisition called for 50,000 pounds of zinc only?     A. One item, yes, sir.

Q. And is it not a fact that some 59,000 pounds of zinc was delivered by the person to whom the award was made?

A. We paid for 59,000 pounds here, sir.

Q. You paid for 59,000 pounds. And you paid for those 59,000 pounds on the inspection of these officers about whom you have just been speaking?

A. Yes, sir; they passed 59,000 pounds.

Q. They passed 59,000 pounds. Then these inspectors inspected and passed the 59,000 pounds, and a warrant, or a check was issued in payment of the 59,000 pounds on their inspection?     A. Yes, sir.

Q. Now, Mr. Spear, after this inspection had been made and a return by said inspectors, their inspection having been made to your office, the next procedure was the issuing of a voucher, was it not?

A. Yes, sir, that would be—

Q. Explain to the jury what you mean by a voucher.

A. A voucher or public bill is a form used by the



(Testimony of Ray Spear.)

Navy Department to pay the merchant for any material or services that they have rendered. This is the form (showing).

Q. And that voucher was issued for the full amount of the 59,000 pounds? [164—117]

A. Yes, sir.

Q. And no more?

A. The quantity agrees with the quantity passed.

Q. The defendant had nothing to do with issuing that voucher, had he?

A. Only general supervision.

Q. Under his supervision. But it was issued in accordance with the call?

A. Yes, sir, that is correct.

Q. And it was his duty to issue that voucher under directions from his superior officers?

A. Yes, sir.

Q. Officer Spear, directing your attention to Plaintiff's Exhibit "14," same being requisition No. 649, I will ask you to state, if you can, from the records of said exhibit, the amount of the estimate placed by defendant on said requisition.

A. You are relating now only to the toban bronze at forty cents a pound?

Q. Sir? A. At forty cents a pound?

Q. That is the particular article of the toban bronze on which you were examined yesterday?

A. Yes, sir.

Q. And that requisition shows at the time it was prepared by this defendant Meyer that he placed thereon an estimate of forty cents.

(Testimony of Ray Spear.)

Q. And it further shows, does it not, that that toban bronze on which this estimate had been placed by the defendant Meyer at forty cents was purchased by the Paymaster at [165—118] fifty cents?

A. In part, yes, sir.

Q. Well, didn't he pay fifty cents for it?

A. Well, there were two awards out on that, sir. Whiton Hardware Company got part of it and the Great Western Smelting Company got the other part.

Q. Well, he did pay to the Great Western Smelter fifty cents?      A. Yes, sir.

Q. Ten cents more than this defendant Meyer placed upon the requisition?      A. Yes, sir.

Q. Mr. Spear, during the time that you were Paymaster, and covering the period involved in this trial, is it not a fact that Mr. Meyer called your attention to the manner in which the W. A. Corder Company was doing business with the Puget Sound Navy Yard?

A. Yes, sir, I remember something of that.

Q. And that is the same W. A. Corder that is indicted and now being tried in this case on a charge of conspiracy?      A. Yes, sir.

Q. And, briefly, is it not a fact that from the reports you received from the defendant Meyer that you took up with the Department at Washington the question of debarring the W. A. Corder Company from doing business at the Puget Sound Navy Yard?

A. Yes, sir, that is correct.

Q. That is a fact, is it not?      A. Yes, sir.

(Testimony of Ray Spear.)

Q. Is it not further a fact that this defendant, Edwin F. Meyer, [166—119] called your attention to the excessive prices that were being paid by the Puget Sound Navy Yard for zinc that was purchased from local dealers, or on the western coast, and that you prepared, after said conversation, a telegram and sent it to Washington relative to that matter? If you have no recollection I will get you the telegram.

A. I would have to refresh my memory. I don't recall that.

Q. You have no recollection of it. I don't suppose you would at this time, but I will furnish you the telegram. While we are getting the telegram, the trouble that you were having with the W. A. Corder Company, and the reason that you wanted the firm debarred from doing business with the yard, was on account of the slowness of the deliveries of the W. A. Corder Company after the awards had been made to them?

A. Yes, that was correct.

Q. And for no other purpose than that?

A. Yes, that is correct.

Mr. MORRIS.—Now, Mr. Spear, I was asking you in regard to a telegraphic communication that was inaugurated by you, or the defendant, under your advice, at his suggestion, and I now call your attention to contract number 12,653. That folder is one of the records of the Storekeeper's Office, is it?

A. Let me see it, sir. (Exhibiting papers to wit-



(Testimony of Ray Spear.)

ness.) Yes, sir, this appears to be from our records.

Mr. MORRIS.—I suppose you would have no objection to having this marked defendants' identified exhibit.

Mr. ALLEN.—It comes from Mr. House?

Mr. MORRIS.—Yes, sir. [167—120]

Mr. ALLEN.—That is all right.

Mr. MORRIS.—Mr. House furnished it to us.

(Papers referred to marked Defendants' Exhibit "A" for identification.)

Q. Directing your attention to telegrams contained in Defendants' Exhibit "A" for identification, I will ask you to examine—

Mr. ALLEN.—Mr. Morris, does that telegram come out of this folder?

Mr. MORRIS.—So you will understand it, we asked for a telegram. Mr. House went out; he knew what we wanted, I took it for granted, and brought into this courtroom this folder and these telegrams were contained in that folder.

Mr. ALLEN.—Thank you. That is correct.

The COURT.—And everything is marked Exhibit "A"?

Mr. ALLEN.—Yes, sir, that is included in there.

Mr. MORRIS.—Yes, sir, for identification.

Q. Handing you a bunch of papers that were taken from defendants' identified exhibit "1," I will ask you now if you can answer the question I propounded to you a while ago about the defendant originating a telegram, and by you signed and transmitted to Washington, calling the Department's attention to

(Testimony of Ray Spear.)

the excessive price that zinc had been purchased at?

A. On the date that that telegram was sent I was in the eastern part of the United States.

Q. You were in the eastern part of the United States? A. Yes, sir.

Q. Then the defendant Meyer—that telegram was sent, though, was it? [168—121]

A. It appears to be taken from the—

Q. Now, just kindly read this to the jury, what it is.

A. "Navy Yard, Puget Sound, Washington, February 19, 1910: To Paymaster General, Navy Department, Washington, D. C. Referring to class 52, contract 12,653, boiler zincs required for 'Tennessee' and 'Washington,' contractor reports can ship like order by rail immediately at eight ninety. Request amendment to contract to cover immediate shipment, order to be followed by wire tracer. Recommend waiver of inspection at works. Cost of local purchase prohibited."

Q. Cost of local purchase prohibited.

The COURT.—What is it?

Mr. MORRIS.—The gentleman suggests we put it in evidence. It is now an identified exhibit. We are willing to have it offered in evidence now as Defendants' Exhibit "A."

The COURT.—Why, it has been identified.

Mr. MORRIS.—We want it, in fact, to go in as evidence, and they consent to it.

The COURT.—It is already in, because it has been read to the jury, and marked admitted.

(Testimony of Ray Spear.)

(Papers referred to received in evidence and marked Defendants' Exhibit "A.")

On cross-examination the said witness testified, as follows:

(By Mr. SCHLESINGER, Counsel for Defendant Emar Goldberg.)

Q. Mr. Spear, was it the purpose of your department to always insure prompt deliveries of purchases?

A. We tried to enforce prompt deliveries.

Q. In event of delayed deliveries would serious consequences not be liable to ensue?

A. To the Government, you mean, or to the firm?  
[169—122]

Q. Yes, to the Government.

A. Well, it all depends. Sometimes—

Q. It all depends. For instance, if a fleet were at this port ready to be equipped, and you did not have on hand sufficient stores, what effect would that delay have on the Government and on the particular fleet?

A. Been rather inconvenient, to say the least.

Q. Would it also have resulted in a loss of large sums of money to the fleet?

A. You mean in the necessity of going out into the open market and purchase wherever possible?

Q. Yes.

A. It might have resulted to some loss.

Q. If any one of the fleet should have to remain here idle, would that also not cause great inconvenience?



(Testimony of Ray Spear.)

A. Provided such was the case it would, yes, sir.

Q. Did you have any complaints upon the part of *the* any of the commanding officers as to delays or neglect in your department? A. No, sir.

Q. In other words, the affairs of your department, so far as you know, were quite satisfactorily conducted?

A. Yes, sir, so far as actually getting the material to the fleet was concerned.

Q. And delay in obtaining supplies would mean a disarrangement of a large number of fixed plans, would it not? A. Yes, sir.

Q. Are you able to give from memory the extent of the sales of Mr. Goldberg's employer, the Great Western Smelting Company, and its subsidiary concern, the Fowler Metal Company, during the [170—123] four years preceding January, 1910, about?

A. Why, I haven't the slightest idea, Mr. Schlesinger.

Q. Well, refreshing your memory, Mr. Spear, is it not a fact that the total sales of both the Great Western Smelting Company and the Fowler Metal Company, aside from this present transaction, does not exceed the sum of \$10,000 over a period of about four years?

Mr. ALLEN.—Your Honor, I don't see how that is material, particularly as a matter of cross-examination.

The COURT.—I don't see where it is cross-examination.

Mr. SCHLESINGER.—If that is the Court's rul-

(Testimony of Ray Spear.)

ing I will not pursue it, but, at any rate, you have no recollection upon that subject?

A. I have not.

Q. You said on your direct examination yesterday that there was a rejection of certain goods supplied by the Great Western Smelting Company. Is it not true that rejections of goods were frequently made in other cases?

A. I don't think you quite understood me yesterday when I said there had been a rejection.

Q. Perhaps not.

A. The thing I remarked was peculiar at that time, that there hadn't been a rejection.

Q. There had not been a rejection. But rejections frequently occurred, did they not?

A. Yes, sir, quite frequently.

Q. And did you not also complain, or was there not a complaint made, about the slowness of delivery of goods emanating not only from the Great Western Smelting Company, but from other concerns as well?  
[171—124]

A. We quite frequently had trouble on delayed deliveries.

Q. And were those complaints taken up with the authorities in Washington?

A. If it needed that drastic action.

Q. And they were frequently so taken up, were they not?

A. Occasionally; yes, sir. We could generally handle those matters ourselves here by enforcing a penalty.

(Testimony of Ray Spear.)

Q. I believe that in March of 1908 there was a purchase of zinc made by the Department in Washington from an Illinois concern, was there not, Mr. Spear?

A. It was delivered there in March, yes, sir.

Q. Delivered in March. Do you know when it was in point of time that order was left?

A. You mean from the time that we made requisition to the time of delivery?

Q. Yes.

A. Sometime in December, I believe, the requisition was started, and the final delivery was made in March.

Q. Now, that transaction was had with the Department itself, was it not?

A. I think that was in accordance with the advertised proposals.

Q. Yes, sir. And those goods were bought from a factory, were they not?

A. La Salle, Illinois; yes, sir.

Q. La Salle, Illinois. When the present transaction was entered into with the Fowler Metal Company, the subsidiary concern of the Great Western Smelting Company, the Department at Washington had before it all of the papers relating to this prior purchase, had they not? [172—125] A. Well,—

Q. They knew exactly what they had paid for zinc in March of that year, isn't that true?

A. I don't know what the Department had before them when they approved that second requisition, because this proposal is dated in May, and, of course, it wouldn't arrive back in the Bureau of Supplies



(Testimony of Ray Spear.)

and Accounts until after that had given approval to that second requisition.

Q. Will you please mention the date, if you can, of this contract with the Illinois concern?

A. I think that was in January sometime, wasn't it?

Q. Do you know when it was that those goods were delivered at the navy yard here?

A. This Illinois contract?

Q. Yes.

A. On the 18th of March, I think that card showed.

Q. Then the Department had before it all of the papers relating to that transaction, had it not? Would there be any question about that, Mr. Spear?

A. Well, I will have to examine dates here.

Mr. RIDDELL.—I don't think you have got the date of the contract out yet, Mr. Schlesinger.

Mr. SCHLESINGER.—I am not concerned with the date, I am concerned with months of time preceding it. To make this matter a little more simple, Mr. Spear, there wasn't any mystery with respect to this prior contract with the Illinois concern?

A. No, sir.

Q. Either as to quality, quantity or price, isn't that true?

A. No, sir, there wasn't anything wrong with that.

Q. Do you know how much stock of zinc available for purposes [173—126] of sale this Illinois concern had on hand in the month of April, 1908?

A. I haven't the slightest idea, sir.

Q. Do you know whether the Department at Wash-

(Testimony of Ray Spear.)

ington endeavored to purchase additional zinc from this same concern in 1908?

A. No, sir, I do not know.

Q. Do you know from personal inspection or examination the quality of the zinc sold by the Illinois concern as compared with the quality of the zinc sold by the Fowler Metal Company?

A. No, sir, I do not.

Q. Do you know whether or not any complaints were made as to the quality of zinc sold by the Illinois concern in March, 1908?      A. I don't recall any.

Q. Do you know of any reason why the Government of the United States, acting through the Navy Department, did not deal a second time with this Illinois concern?      A. I do not know.

Q. You testified at some length yesterday, Mr. Spear, with respect to the necessity of advertisement in certain cases. You are familiar, are you not, with this book of rules and regulations?      A. Yes, sir.

Q. And you do know that in certain cases advertisement may be waived?      A. Yes, sir.

Q. Directing your attention to the particular transaction in controversy, was, in that case, the necessity for the advertisement and the advertisement itself waived by the Government? [174—127]

A. Yes, sir.

Q. And through what particular officer of the Government was that waiver made or consented to?

A. Through the Secretary of the Navy.

Q. In other words, the Secretary of the Navy, the chief official of the Navy Department, in this particu-

(Testimony of Ray Spear.)

lar transaction waived the advertisement?

A. Yes, sir.

Q. You do not, of course, question, do you, Mr. Spear, the regularity of that act upon the part of the Secretary?

A. None whatever.

Q. And never have questioned it?

A. No, sir.

Q. You do not know what moved or actuated that official to give that waiver, do you, personally?

A. It was probably our request on the face.

Q. The purchase of that zinc was made for extraordinary conditions to arise, was it not?

A. Yes, sir, that was the—

Q. The arrival of that second fleet was a very unusual thing in the history of this navy yard, was it not?

A. Yes, sir, very much so.

Q. And you prepared yourself for that particular exigency, did you not?

A. Yes, sir.

Q. It was an exigency?

A. Yes, sir.

Q. It was an extraordinary occasion?

A. Yes, sir.

Q. And you conducted yourself accordingly?

[175—128] A. Yes, sir.

Q. Mr. Spear, have you exhibit number “4”?

A. Yes, it is up here on the desk.

Q. Mr. Spear, I will ask you to read to the jury that first item, commencing with the figures “50,000.”

A. “Item one, 50,000 pounds of zinc, rolled sheet boiler plat  $\frac{1}{2}$  by 6 by 12, estimated cost .125,” the total estimate is \$625.

Mr. SCHLESINGER.—Now, gentlemen, I will ask



(Testimony of Ray Spear.)

you all to look at that exhibit.

Mr. ALLEN.—Which one is that?

Mr. SCHLESINGER.—It is the one in evidence: That is exhibit “4.”

Mr. SCHLESINGER.—Through how many officers’ hands did that particular document pass?

A. That particular document only passed in my office, remained in my office.

Q. Did you look at it, Mr. Spear?

A. Well, possibly not that particular copy, but a copy exactly like it.

Q. Well, before this award was made to the Fowler Metal Company, how many officials of the Government had examined the preceding papers, about?

A. The Paymaster General, the Secretary of the Navy and the Purchasing Pay office at Seattle.

Q. And, of course, read those figures?

A. I imagine so.

Q. You have no complaint from the Department with respect to that form?

A. I don’t recall any. [176—129]

Q. Don’t recall any. Now, Mr. Spear, the same Paymaster who had purchased the zinc on previous occasions passed upon this particular transaction, did he not?

A. Well, no, I won’t say that, sir. I beg your pardon. Do you mean the other large quantity?

Q. Yes.

A. No, that was handled back in Washington, sir.

Q. Well, did he not have copies of the papers showing the amount for which that zinc had been pur-

(Testimony of Ray Spear.)

chased? A. No, I had that, sir.

Q. Well, did you not have in your office at least a half a dozen transactions covering the purchase of zinc with prices running all the way from twelve or eight to fifteen cents a pound?

A. Well, I don't know what that record is, but we had purchased zinc undoubtedly before.

Q. Ranging in price from eight to fifteen or sixteen cents, isn't that true?

A. I don't know those prices.

Q. Well, do you recall the lowest price?

Q. What is your recollection as to that, Mr. Spear?

A. I think they ran from seven cents up to twelve, thirteen or fourteen cents.

Mr. SCHLESINGER.—In other words, the prices fluctuated?

A. Yes, sir.

Q. Now, so far as you know, was there anything irregular in the matter of those prior sales?

A. So far as I know, I know nothing about it.

Q. In every respect—

A. I know nothing irregular about them, is what I meant. [177—130]

Q. So far as you know. In every respect the rules and regulations governing the Navy Department and the laws were faithfully carried out? A. Yes, sir.

Q. Now, after the delivery of these goods, and after the issuance of the pay check, were not all of the papers returned to Washington for the purpose of having them checked?

A. They have means of checking all these.

(Testimony of Ray Spear.)

Q. In other words, in Washington, in the Navy Department, they have an Accounting Department, have they not? A. Yes, sir.

Q. That Accounting Department is presided over by very efficient, expert accountants, isn't that true?

A. They are supposed to be, yes, sir.

Q. How often does the local Navy Yard Department report to the Accounting Department in Washington, at least once a month?

A. Well, it depends upon what report you are referring to.

Q. Well, have you monthly reports?

A. We generally make out returns quarterly.

Q. You make your returns quarterly. Now, in making your returns do you return accounts for stores and supplies on hand as well as for purchases?

A. Yes, sir, there are various monthly and quarterly returns. I can't specify all of them. They are innumerable. The principal reports we render are quarterly.

Q. In other words, you are checked up by the main office in Washington, D. C., are you not?

A. Yes, sir.

Q. And you were in this particular transaction?  
[178—131]

A. Yes, sir, our office and the Purchasing Pay office in Seattle.

Q. Mr. Spear, this card here, bearing the caption "Account E" article, zinc plate for boilers, bears at the end of it "Limit of Stock 4,000, make requis-



(Testimony of Ray Spear.)

tion.” Where was that particular account kept, in whose office?

A. This is the storeman’s card in the plate metal shed at Bremerton.

Q. Did that card come under your inspection from time to time? A. I presume it did, sir.

Q. And you were familiar with its contents?

A. Well, as much as I am familiar with sixty thousand other cards of similar nature, say.

Q. Certainly. And this wasn’t secret? A. No.

Q. Withheld from your view or inspection?

A. No.

Q. Was the quantity and quality of zinc called for in this particular transaction actually delivered?

A. Yes, sir. I assume that it was. The papers to indicate that.

Q. Was there any shortage complained of?

A. No, sir.

Q. Did the Government pay any more for that zinc than it had agreed to pay, as far as you know?

A. No, sir.

Q. I believe you testified, Mr. Spear, that this blue book, dated 1905, was in effect at the Navy Office during the year 1908? [179—131½] A. Yes, sir.

Q. I will now read in evidence, if your Honor please—

Mr. ALLEN.—Will you let me see the particular paragraph?

Mr. SCHLESINGER.—As soon as I find it, Mr. Allen. I will read from this book Article 1309, as a part of this cross-examination.

(Testimony of Ray Spear.)

Mr. ALLEN.—It is already in evidence, your Honor.

The COURT.—That has been read?

Mr. ALLEN.—Yes, sir.

Mr. SCHLESINGER.—Well, I will read it as a part of the cross-examination, a certain subdivision. “There shall be three forms of purchase made, subdivision A by written contract, under a formal written contract after advertising for and receiving sealed proposals. Subdivision B, by open contract for service. Subdivision C by open purchase, the exigencies of the service require the immediate delivery of all articles not obtainable under existing contracts and they are procured in open market.” I will now read Article 1303 in the same book.

Mr. ALLEN.—This is not in evidence, is it?

Mr. SCHLESINGER.—Well, we will offer it in evidence.

“All purchases and contracts for supplies or services for the Naval Service shall be made by or under the direction of the chief officer of the Department of the Navy.”

“1304: All purchases and contracts for supplies or services in any of the departments of the Government, except for personal services, shall be made by advertising a sufficient time previously for proposals respecting the same, when the public exigencies do not require the immediate delivery of the articles or performance of its service. When immediate delivery [180—132] or performance is required by public exigency, articles or services re-

(Testimony of Ray Spear.)

quired may be procured by open purchase or contract at the places and in the manner in which said articles are usually bought and sold.”

“1339: Subdivision 3: In all cases where the legality of a purchase without advertisement and the public opening of bids depends upon the existence of a public exigency requiring immediate delivery, it is essential that it appear on the voucher or accompanying papers that the decision was made on that point before the property was purchased.”

Q. I will ask you, Mr. Spear, whether, in this particular transaction, it did appear upon the voucher, or some accompanying paper, that a decision was lawfully made with respect to the immediate purchase of these articles without advertisement?

A. Yes, sir.

Q. That is true?      A. Yes, sir.

Q. In other words, the requirements of that regulation were carried out to the very letter?

A. Yes, sir.

Q. To make the matter absolutely plain, Mr. Spear, was there in this case a single deviation or departure from any known rule or regulation, so far as you know?

A. No, sir, the thing was in due technical form.

Q. Just one more question, Mr. Spear, and I will be through with you. Now, Mr. Spear, I will hand you a letter dated January 9, 1909, and ask you whether it contains your signature?

A. Yes, sir, that is my signature.

Mr. ALLEN.—(Examining paper.) We have no



(Testimony of Ray Spear.)

objection to that [181—133] letter going in. It is rather irregular cross-examination, I suggest to your Honor, but I haven't any objection to it going before the jury, only I call your Honor's attention to this fact, this is of date January 9, 1909, one full year, or nearly one full year, after this particular transaction.

The COURT.—Admitted.

(Paper referred to received in evidence and marked Defendant's Exhibit "B," reading same to jury.)

Q. Mr. Spear, were you in the habit of making weekly returns to the Navy Department of purchases? A. No, I don't believe so.

Q. Did your department keep a very accurate account of the amount of stores on hand, as a rule?

A. Not in items; they did in money values.

Q. Money values?

A. You say my department. Do you mean in my own office, or did you mean the Navy Department?

Q. The Navy Department. A. In Washington?

Q. In Washington?

A. That answers the question, in money values only.

Q. But the Navy Department practically had copies of all the accounts of your department, substantially?

A. Well, particularly of requisitions and public bills.

Q. Yes, sir. And they did have with respect to the fitting out of the fleet in 1908?

(Testimony of Ray Spear.)

A. Eventually. Of course, they hardly have an itemized account of it; they have money values; they could always get the items if they desired it.

Q. They know just what purchases were made, do they not? [182—134]

A. They have a record of all purchases.

Mr. SCHLESINGER.—That is all.

By Mr. MORRIS.—There is just one question I forgot to ask Mr. Spear, your Honor, that I recall.

Q. Officer Spear, is it not a fact that on many occasions during the time in question that is covered by this indictment, it was the custom of the Storekeeper to telephone to Seattle to the supplymen, and to write letters, or telegraph eastern people, when you wanted to know if a certain article could be supplied on short notice?

A. Are you through with the question?

Q. No. Go on.

A. Well, we used to obtain information as to the quantity of the material in the city, and also the prices.

Q. Also the prices. And that occurred on a great many occasions, both as to local people and to eastern people, by telegraphic communication, and so forth?

A. Oh, yes, that was a regular routine procedure.

Mr. MORRIS.—That is all.

On cross-examination the said witness testified as follows:

(By Mr. VANDERVEER.)

Q. Mr. Spear, the United States Navy required

(Testimony of Ray Spear.)

a broader range of steam engineering specialties than the commercial trade here, did it not?

A. Well, it is rather special material.

Q. Who carried the biggest line of steam engineering specialties in Seattle?

A. Well, we used to depend upon the largest wholesale [183—135] hardware houses here.

Mr. VANDERVEER.—Isn't it a fact that Mr. Corder carried the most complete line of specialties?

A. He had some. I really don't know what the extent of his stock was.

Mr. SCHLESINGER.—That was before he became bankrupt?

Mr. VANDERVEER.—At the time, yes.

Q. And you frequently called upon Mr. Corder to ascertain whether he had certain special articles that you couldn't secure elsewhere?

A. I understood that Mr. Corder at that time was a manufacturer agent for most of this material he was supplying.

Q. True, yes, but he had a lot of stock, didn't he?

A. I really don't know the extent of his stock; I don't believe I have ever been in his place.

Q. Mr. Morris *question* you about some difficulty that arose over a complaint that Mr. Meyer made to you about Mr. Corder. You referred that to the United States Navy Pay Office here in Seattle, did you not, Mr. Ryan then in charge?

A. There was correspondence between our office, yes.

Q. And then you referred it to the Chief Pay-



(Testimony of Ray Spear.)

master of the Navy at Washington?

A. I think that was the course of the correspondence.

Q. Now, there was nothing in that complaint involving any irregularity in Mr. Corder's bids, or any irregularity in his contract; it was over the delay in the delivery of his goods, was it not?

A. Well, I questioned the good faith of Mr. Corder on some of his time deliveries under which he undertook to make delivery. [184—136]

Q. Well, he didn't deliver within the time in which he had agreed to?

A. No, on that he was a specific offender, on the time of delivery. He would take a contract for five days and take his time in delivery. In other words, he thought we didn't mean five days when we said that we wanted an article in five days.

Q. It had nothing to do with any suspicion of dishonesty?

A. Oh, no, I had no suspicion of anything.

Q. And this was first laid before the office here, and then laid before the office at Washington, and your recommendations were not adopted at either place?

A. I don't remember really what action the Department did take.

Q. I will ask you if you recall the occasion when your office initiated a complaint over some clinker gauge-glasses that were furnished by Mr. Corder?

A. Yes, sir.

Q. And that matter was a subject of a good deal

(Testimony of Ray Spear.)

of correspondence between you and Mr. Corder in the beginning?     A. Yes, sir.

Q. And subsequently and finally Mr. Corder wrote you a long letter, at the end of which he stated the matter should be laid before the head of the Steam Engineering Department at Washington?

A. Well, now, you are getting me down to a detail that I don't remember.

Q. You don't remember. You remember that that was not so, Mr. Spear? [185—137]

A. I don't remember that it was not so; no.

Q. You don't remember anything about it one way or the other?

A. I remember the difficulty we had over clinker gauge-glasses.

Q. You remember that finally, through the intervention or recommendation or action of the head of the Steam Engineering Department at Washington, his bill for those glasses was paid?

A. I think so; yes, sir.

Q. Can you recall any occasion, Mr. Spear, when Mr. Corder ever got the best of anything in your office?

A. No, I don't know. I don't believe I—

Mr. SCHLESINGER.—Did you ever hear of the Great Western Smelting & Refining Company?

Mr. ALLEN.—I object.

The COURT.—Objection sustained.

Mr. SCHLESINGER.—Exception.

Mr. VANDERVEER.—That is all.

(Testimony of Ray Spear.)

(By Mr. ALLEN.)

Mr. SCHLESINGER.—Do I understand, Mr. Allen, what you want is an agreement between us that either counsel may read over any part of this book?

Mr. ALLEN.—That is 1909.

Mr. SCHLESINGER.—Well, we will take the book of 1905, then.

Mr. ALLEN.—Yes, that is all right.

The COURT.—Exhibit “9” is 1905.

Mr. ALLEN.—Well, that is consented to. The whole of contents of requisition number “4,” we ask that be admitted in evidence. [186—138]

Mr. SCHLESINGER.—What is exhibit number “4”? (Referring to Blue Book of 1909.)

Mr. ALLEN.—We object to 1909.

Mr. SCHLESINGER.—As a matter of fact, the Court will take judicial notice of these regulations.

The COURT.—What is the objection to exhibit number “4”?

(No answer.)

It is admitted.

Mr. MORRIS.—Exhibit “4,” number of requisition 438.

The COURT.—Part of the Storekeeper’s Office.

Mr. SCHLESINGER.—Is this complete as to exhibit “4”?

Mr. ALLEN.—It should be; it was.

Mr. RIDDELL.—No, this isn’t “4.”

The COURT.—Well, you better look them over during noon recess.



(Testimony of Ray Spear.)

Cross-examination (Resumed).

Mr. SCHLESINGER.—Mr. Spear, I will show you a letter dated May 6th, 1908, and purporting to have been signed by you. Is that your signature (showing paper to witness)?

A. Yes, sir.

Q. Has that been signed by you in the usual course of your official duties?

A. I think so; I assume that it was, of course.

Q. And transmitted to the Commandant at the Navy Yard, Puget Sound, Washington?

A. Yes, sir.

Mr. SCHLESINGER.—Now, your Honor please, we offer in evidence this letter as a part of the cross-examination. I will ask you this primary question: Did that letter contain the true state of facts as you understood it to be [187—139] at that time?

A. I haven't read the letter yet; I would like to read it. This part, your Honor please, of the official files given to us by the Government officers (handing same to witness).

A. Yes, I think that was—

Q. That represents the true condition of affairs at that time?

Mr. ALLEN.—On inspection of this document, your Honor, I have no objection to this instrument being taken from the files in which it was found and offered as an exhibit in the case. It is defendants' exhibit, of course, but we would just as soon have it marked as plaintiff's.

The COURT.—If these documents are necessary

(Testimony of Ray Spear.)

to be preserved at the navy yard, perhaps copies had better be supplied.

Mr. SCHLESINGER.—To that we have no objection, your Honor.

Mr. ALLEN.--You Honor, I presume, with consent of counsel, if we want the originals of any of these we may supply copies?

Mr. SCHLESINGER.—There is no objection, Mr. Morris, to that.

Mr. MORRIS.—What is that?

Mr. SCHLESINGER.—The originals taken back and copies furnished. That will be the understanding.

The COURT.—Very well; proceed. Do I understand there is no objection to this being introduced?

Mr. SCHLESINGER.—No, sir. Navy Yard, Puget Sound, Washington, May 6th, 1908.

(Papers referred to and received in evidence and marked Defendants' Exhibit "C.")

Mr. SCHLESINGER.—“The General Storekeeper respectfully requests that the heads of departments expedite in every possible way the preparation of open purchase requisitions [188—140] for material for the battleship fleet requiring technical description and specifications. The time is now so short that it is imperative that these requisitions be in the hands of the Purchasing Pay Office at the earliest practical date. Very respectfully, Ray Spear, Paymaster U. S. N., General Storekeeper. Addressed to the Commandant Navy Yard, Puget Sound, Washington.”

(Testimony of Ray Spear.)

Q. Who was the Commandant referred to in that communication, Mr. Spear?

A. Admiral Burrell was in command of the yard at that time.

Q. And is he now in command?

A. Admiral Burwell is dead.

Mr. SCHLESINGER.—Now, Mr. Spear, I will call your attention to what purports to be a wireless telegram bearing date April 22d, 1908. Was that wireless telegram received at your office in due course of official business at or about the date it bears?

A. Well, that telegram was originated by me, sir, not received in my office.

Q. Well, was it sent by you?      A. Yes, sir.

Q. In due course of official business?

A. It is taken in connection with that former exhibit; it is practically the same subject.

Q. And does it represent the condition of affairs as they then existed?      A. Yes, sir.

Mr. ALLEN.—Let me see the telegram. (Examining same.) [189—141] We have no objection to that going in as their exhibit.

Mr. SCHLESINGER.—You sent that telegram, Mr. Spear, after being fully satisfied of the needs and requirements of the yard?

A. Yes,—well, I was in—

Q. You were in charge. This is a wireless telegram and is dated April 22d, 1908. “To Commander in Chief, Atlantic Fleet. It is noted the telegram of April 15th, Bureau of Construction and Repair, special order No. 67, in that the ‘Georgia,’ ‘New



(Testimony of Ray Spear.)

Jersey,' 'Rhode Island' and 'Virginia' will dock at Puget Sound instead of the 'Minnesota,' 'Ohio,' 'Missouri' and 'Calgoa.' A telegram from the Commander in Chief of the Atlantic Fleet states 'That vessels will take on stores at the yard to which they are assigned for docking. I respectfully state that some misunderstanding seems to exist, as the General Storekeeper has not received any requisition from the 'Virginia,' 'Georgia,' 'New Jersey' or 'Rhode Island,' while requisitions have been received from the 'Minnesota,' 'Missouri,' 'Ohio,' vessels that are not coming to the yard for docking. Information is requested as to whether or not the 'Virginia,' 'Rhode Island,' Georgia' and 'New Jersey' expect to receive their stores at this yard, and, if so, the requisition should be submitted immediately. Information is also desired as to whether we shall continue to assemble stores for the 'Ohio,' 'Minnesota' and 'Missouri.' " In using the word "stores" in that wireless telegram had you in mind such articles as zinc needed for boilers?

A. Oh, it might have been included.

Q. And prior to sending this telegram had you expected to [190—142] receive requisitions from the "Virginia," "Georgia," "New Jersey" and "Rhode Island"? A. No, sir.

(Telegram referred to received and marked Defendants' Exhibit "D.")

Q. Had you not expected to receive requisitions for those vessels?

(Testimony of Ray Spear.)

A. Just let me be sure of those ships that you named there.

Q. I think I have read them correctly, Mr. Spear.

A. No, we had not expected to furnish supplies to those particular vessels. We had expected to furnish supplies to the "Minnesota," "Ohio," "Missouri" and "Calgoa," vessels that were expected were coming to the yard.

Q. In other words, you had expected those vessels would reach the yard?

A. Yes, sir. As a matter of fact, they did not.

Q. As a matter of fact, they did not. But, to be upon the safe side, to see to it that there would be no shortage in the matter of supplies, you went to the trouble of sending this wireless telegram, did you not, Mr. Spear?

A. Yes, sir.

Q. I will call your attention to what purports to be another wireless telegram bearing date April 22d, 1908 (exhibiting same to witness). I will ask you whether or not, in the due course of your official duties, you sent that telegram on or about that date?

A. Yes, sir, we sent that.

Q. Did you send that telegram, Mr. Spear, after you had ascertained the condition of stores at your yard and the probable wants of the coming fleet?

[191—143]

A. Well, I didn't know the probable—well, I knew the probable wants, but I didn't know the actual want.

Q. And, acting upon that information, in your position you sent that telegram, did you not?

(Testimony of Ray Spear.)

A. Yes, sir.

Q. And that telegram represented to your mind the condition of affairs at the navy yard at that time with respect to stores?     A. Yes, sir.

Q. I will now, gentlemen of the jury, read to you—

Mr. ALLEN.—Pardon me; I haven't even seen that. (Examining same.)

Mr. SCHLESINGER.—I now formally offer in evidence, your Honor please, a part of the officials' files, being the letter and telegram I have just read to the witness, practically the same thing.

The COURT.—That entire folder is in evidence?

Mr. ALLEN.—No, sir, that folder was offered for identification.

Mr. SCHLESINGER.—We will state now, Mr. Allen, that we haven't any objection to this entire folder, together with the contents, being admitted in evidence.

Mr. ALLEN.—There isn't any objection on our part, your Honor, except the fact it encumbers the record with a lot of useless matter.

Mr. SCHLESINGER.—I would like to have the jury get every possible—

The COURT.—Proceed. (Marked Defendants' Exhibit "E.")

Q. "U. S. Navy Wireless Telegram Service, Navy Yard, Puget Sound, Washington, April 22d, 1908. Commander in Chief, Atlantic Fleet, U. S. S. Connecticut. If 'Georgia,' 'New Jersey,' 'Rhode Island,' 'Virginia' expect to receive stores at this yard, [192—144] requisition for same should be



(Testimony of Ray Spear.)

submitted. Nothing received from above-mentioned vessels." Why, Mr. Spear, did you send that telegram to the Commander-in-Chief of the Atlantic Fleet?

A. For the reason that we had received information from the Bureau of Construction and Repair in Washington, I believe, information that these vessels were coming to the yard.

Q. Then that information that you had received came from your superior officials at Washington?

A. In a very peculiar roundabout way, yes, sir.

Q. Well, you ultimately received it in due course of official business? A. Yes, sir.

Q. And the purpose of that information was to enable you to gather sufficient supplies to supply the incoming fleet?

A. No, that wasn't the reason the information was given to us by Washington. It came to us rather inadvertently.

Q. What was the purpose of the information?

A. The information that we received from the Bureau of Construction and Repair had to do purely with the docking of the vessels, not with their supplies. The Bureau of Construction and Repair are not concerned with supplies.

Q. Now, Mr. Spear, in that same connection I will direct your attention to a wireless telegram, still another, dated May the 1st, 1908, and addressed to the Commander-in-Chief of the Atlantic Fleet. Do you recognize that telegram (exhibiting same to witness)?

(Testimony of Ray Spear.)

The COURT.—Defendants' Exhibit "F."

Mr. SCHLESINGER.—That was sent by your dictation?     A. I imagine it was.

Q. And did it truly represent the condition of affairs at that [193—145] time?     A. Yes, sir.

Mr. ALLEN.—Are you prepared to offer that in evidence?

Mr. SCHLESINGER.—Yes, sir.

The COURT.—I wish you would have the clerk mark them.

Mr. SCHLESINGER.—I have so identified them that I can easily determine them. I am trying to expedite the matter along.

Mr. ALLEN.—If it please the Court, if counsel will now state to me how many of these matters he wants to put in the record, why, it may help us.

Mr. SCHLESINGER.—This will be probably the last, Mr. Allen.

Mr. ALLEN.—That is of date May 1st, 1908?

Mr. SCHLESINGER.—Yes.

Mr. ALLEN.—I have no objection.

(Papers referred to received in evidence and marked Plaintiff's Exhibit "F.")

Mr. SCHLESINGER.—"Wireless telegram, May 1st, 1908. Commander-in-Chief of the United States Atlantic Fleet, U. S. S. Connecticut. Request that all requisitions of ships, second and fourth division, be forwarded to Puget Sound immediately. This also refers to closing requisitions."

Q. By the way, Mr. Spear, what was zinc used for by the Navy Department?

(Testimony of Ray Spear.)

Mr. ALLEN.—Now, your Honor, that has been gone over.

Mr. SCHLESINGER.—That has been gone into, that is true. Did you get the information contained in that telegram from the head of the Department of Equipment, Steam Engineering and Construction?

A. No.

Q. Well, I will call your attention, Mr. Spear—  
[194—146]

A. You mean the subject I referred to in that telegram?

Q. Yes.

A. They couldn't possibly give me any information, except in a very small way.

Q. Well, you picked up information wherever you possibly could? A. Yes.

Q. And you were quite satisfied of the correctness of it at the time you sent the telegram?

A. Yes, sir.

Q. Mr. Spear, I would like to ask you a final question. Did you receive from the Department, from the Secretary of the Navy, or any other official in authority, any complaint as to alleged exorbitant or unconscionable profit with respect to this transaction? A. No, sir.

Q. Did not.

Mr. SCHLESINGER.—That is all.

Mr. ALLEN.—If it please the Court, because this matter came up at noon, we again offer our offer in evidence of certain exhibits which were merely identified, and which counsel reserved the right to ex-



(Testimony of Ray Spear.)

amine upon, calling your Honor's particular attention to exhibit "7," I believe.

The COURT.—What was that?

Mr. ALLEN.—"7," your Honor, is the folder 438.

The COURT.—What was that?

Mr. ALLEN.—Folder and contents. That is the particular matter in controversy, your Honor, that is the folder with its data.

The COURT.—Any objection? [195—147]

[Indorsed]: Proposed Bill of Exceptions on Behalf of Defendants, Edwin F. Meyer and Emar Goldberg. Vol. Pages 1 to 147. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Mar. 11, 1914. Frank L. Crosby, Clerk. By E. M. Lakin, Deputy. [196]

Mr. ALLEN.—This is the folder, your Honor, found in the Navy Office in Seattle. Also that exhibit that is marked Plaintiff's Exhibit "15."

The COURT.—Any objection to number "7"? If not, it is admitted.

Mr. SCHLESINGER.—Your Honor, before making the order, these folders contain so many various documents, we would like to have a chance to examine each one separately.

The COURT.—It has been offered since yesterday.

Mr. ALLEN.—Your Honor, they have had ample time. That is admitted?

The COURT.—Yes.

(Papers referred to received in evidence and marked Plaintiff's Exhibit "7.")

(Testimony of Ray Spear.)

Mr. ALLEN.—We offer in evidence Plaintiff's Exhibit "15," yard folder.

The COURT.—That was admitted yesterday.

Mr. ALLEN.—And we offer "14," your Honor.

Mr. SCHLESINGER.—What is "14"?

The COURT.—Storekeeper's folder number 649.

Mr. ALLEN.—We are offering these two, then; they are admitted in evidence.

The CLERK.—How about number "11"?

Mr. ALLEN.—We have taken out of number "11" certain letters, and they have been especially admitted in evidence. We don't want the letter file in.

Mr. SCHLESINGER.—Do I understand the pending offer is for the admission of "14" in evidence?

The COURT.—"14."

Mr. SCHLESINGER.—We object to that on the ground the folder [197—148] and contents thereof are absolutely immaterial, incompetent, irrelevant and in no wise binding upon these defendants.

The COURT.—Overruled.

Mr. ALLEN.—That is the toban bronze matter, your Honor.

The COURT.—It will be admitted.

Mr. SCHLESINGER.—We take an exception.

(Papers referred to received in evidence and marked Plaintiff's Exhibit "14.")

Mr. ALLEN.—"15" is admitted?

The CLERK.—Not admitted.

Mr. ALLEN.—We offer in evidence Plaintiff's Exhibit "15."

(Testimony of Ray Spear.)

The COURT.—That was admitted in evidence yesterday.

Mr. SCHLESINGER.—I just want to look at it a moment, your Honor, if I may (examining same). We object to the introduction of exhibit “15” for identification in evidence, folder number 169, upon the ground that it is irrelevant, incompetent and immaterial; it has nothing to do with any of the issues involved in this case; it is too remote in point of time, and represents an entirely different transaction.

The COURT.—What is the matter in question?

Mr. SCHLESINGER.—Now, it is possible if the Court withdraw this temporarily we may let this go in; I don’t know; it may save time.

Mr. ALLEN.—Number “4,” your Honor, our records don’t show that has been admitted in evidence. That is 438.

The COURT.—That has not been admitted.

Mr. ALLEN.—We move the admission of that folder and contents.

The COURT.—What is that?

Mr. ALLEN.—That is the navy yard folder for the case in [198—149] chief, for the case in question.

Mr. SCHLESINGER.—You are offering now the entire folder, as I understand it?

Mr. ALLEN.—I am offering exhibit number “4,” not that (showing).

Mr. SCHLESINGER.—What are you offering that is contained in that folder, in folder exhibit number “4”?



(Testimony of Ray Spear.)

Mr. ALLEN.—I am offering the folder and its contents.

Mr. SCHLESINGER.—Are you not offering that check as part of its contents?

Mr. ALLEN.—No, that is already in.

Mr. SCHLESINGER.—If you tell me what you are offering, I will meet the objection, but I cannot meet the objection if you make—

Mr. ALLEN.—This was admitted in evidence without objection.

Mr. SCHLESINGER.—What *are offering* with respect to exhibit number “4,” what are you offering?

Mr. ALLEN.—We are offering the folder and contents, any memorandum in number “4,” with the contents and with the folder, in requisition number 438, the same being a part of the naval records kept in the Navy Yard of Puget Sound.

Mr. SCHLESINGER.—What do you claim the contents to be of that folder?

Mr. ALLEN.—Well, I would have to refresh my memory.

Mr. SCHLESINGER.—Then we are not prepared to make this argument at this time. I want to know what specific offer you make.

Mr. ALLEN.—For the information of counsel, and for the information of the Court, the contents as now offered is call for inspection of supplies on 438, which is the case in chief; [199—150] the Board of Inspection sets out and has the proper signature and proper stamp; and there is the bill, the Fowler

(Testimony of Ray Spear.)

Metal Company, and memorandum—are there any other matters?

Mr. SCHLESINGER.—There isn't any objection to that, if that is what you offer.

Mr. ALLEN.—And also, of course, that part of the folder which is attached, your Honor, that includes the offer, which is a copy of this requisition retained in the Navy Yard Office at Bremerton.

Mr. SCHLESINGER.—If you confine your offer to that particular matter in question we do not interpose any objection.

Mr. ALLEN.—If Mr. House could tell me whether or not there has been anything taken out of that folder—the instruments are all here. That is the offer. This contains everything that belongs in that folder (handing same to Mr. House)?

Mr. HOUSE.—(Examining same.) Yes.

Mr. ALLEN.—It contains, Mr. House says, all of it. We offer that in evidence, your Honor.

The COURT.—I understand there is no objection.

(Papers referred to received in evidence and marked Plaintiff's Exhibit "4.")

Mr. ALLEN.—We next call your attention, your Honor, to Plaintiff's Exhibit Number "7." Has that been admitted?

The CLERK.—You just admitted that a few minutes ago.

Mr. SCHLESINGER.—What have you just offered in evidence, please?

Mr. ALLEN.—Well, I have explained it to the Court.

(Testimony of Ray Spear.)

Mr. SCHLESINGER.—I know, but counsel is entitled to know.

The COURT.—Well, now, see here; you should remain here so we will not take time unnecessarily. Just repeat what [200—151] you offered here. You should have remained here and not unnecessarily consume the time of the Court.

Mr. ALLEN.—Now, in order that the record—your Honor, I understand the clerk's minutes show exhibit number "7," has been admitted in evidence, is that right?

The CLERK.—Just a few moments ago.

Mr. SCHLESINGER.—Now, I wish to ask a question for information. You have just made an offer of a certain document. What offer have you made? I will ask the reporter to read his notes.

Mr. ALLEN.—I will withdraw that offer as made. It is already made and admitted, but the offer was intended to include the folder and all the contents, including all those parts which are attached to the inside of the folder, together with all the notations as well.

The COURT.—Show it to counsel.

Mr. ALLEN.—Counsel has seen it.

Mr. SCHLESINGER.—So as to identify the contents of this folder which is now offered in evidence, I ask permission to read from each document so that the papers can be identified by this Court at some future time. Have you any objection to that course being pursued?

Mr. ALLEN.—I think the Court would take the



(Testimony of Ray Spear.)

same position in that matter I would; it is a useless waste of time.

The COURT.—Why, the documents are all marked by reference, I understand, the date and name.

Mr. SHIPLEY.—The folder is, but not the documents.

Mr. SCHLESINGER.—That is where the difficulty comes in.

The COURT.—Let the documents remain so they will not be confused. [201—152]

Mr. ALLEN.—Your Honor, I started out originally in my offer of evidence to do that very thing, and, after suggestion of both counsel and Court—

The COURT.—Just name these in the record.

Mr. ALLEN.—This particular exhibit is requisition number 438, including the folder and all of the contents, which are more specifically described as follows: The requisition, the copy of the requisition attached to the left-hand page on the inside of the folder; the order for the supplies of service attached to the right-hand side of the inside of the folder; the proposal for supplies or bids dated April 11, 1908, of the Fowler Metal Company, bearing certain stamps to the departments; also the proposal of the same date of the Fowler Metal Company, being a duplicate printed with the same name; the proposal of the Great Western Smelting & Refining Company, date of April 11, 1908; proposal of the American Iron & Metal Company of April 11, 1908; the proposal of P. McManus, dated April 11, 1908; the proposal

(Testimony of Ray Spear.)

of P. McManus, apparently a duplicate, of April 11, 1908; the proposal of W. A. Corder & Company, April 11, 1908, signed W. A. Corder & Company; W. A. Corder Company, apparently a duplicate, April 11, 1908; Pacific Engineering Company, dated April 11, 1908, signed Pacific Engineering Company; a proposal of the same date, April 11, 1908, with the name Pacific Engineering Company at the top, but not endorsed at the bottom; the proposal of April 11, 1908, of Schwabacher Hardware, not signed at the bottom; proposal of Schwabacher Company not signed at the bottom, of April 11, 1908; proposal of Puget Sound Machinery Depot; [202—153] proposal of April 11, 1908, with no signature at the bottom; a proposal of Seattle Hardware Company, April 11, 1908; proposal of Seattle Hardware Company, April 11, 1908, with no signature attached; proposal of the Hallidie Machinery Company, April 11, 1908, "No bid," signed at the bottom; proposal of Hallidie Machinery Company, April 11, 1908, with no signature at the bottom. I mention also the loose copy of the requisition, memorandum copy number 2, being requisition for 50,000 pounds of zinc for the sum of \$6,250, with appropriate stamps thereon.

Mr. SCHLESINGER.—To the offer of counsel for the Government for the introduction in evidence of paper bearing the caption, Fowler Metal Company, and dated April 11, 1908, we object upon the ground that the same is irrelevant, immaterial, incompetent and no wise binding upon the defendant, and is not included as an overt act in this indictment.

(Testimony of Ray Spear.)

The COURT.—Overruled.

Mr. SCHLESINGER.—We make the same objection to the paper dated April 11, 1908, in the name of the Fowler Metal Company.

The COURT.—Same ruling.

Mr. SCHLESINGER.—We make the same objection to the one dated April 11, 1908, in the name of the Great Western Smelting Company.

The COURT.—Same ruling.

Mr. SCHLESINGER.—Same objection with respect to the American Iron & Metal Company bearing the same date.

The COURT.—Same ruling.

Mr. SCHLESINGER.—April 11, 1908, in the name of P. McManus, [203—154] same objection.

The COURT.—Same ruling.

Mr. SCHLESINGER.—And the one immediately following in the same name and of the same date.

The COURT.—Same ruling.

Mr. SCHLESINGER.—W. A. Corder & Company, same objection.

The COURT.—Same ruling.

Mr. SCHLESINGER.—And all of the succeeding papers without specifying them by name.

The COURT.—Same ruling and an exception noted to each ruling.

Mr. ALLEN.—That, I believe, your Honor, includes all the instruments which were offered for identification.

The COURT.—Is there any objection to this?



(Testimony of Ray Spear.)

Mr. ALLEN.—That was admitted by consent of counsel.

Mr. SCHLESINGER.—Now, your Honor, I know no stipulation of counsel will be repudiated. It is not my recollection any of those documents have been admitted. The offer was made for the admission of a certain folder, together with the contents, but the contents of the folder has not been examined any more than were the contents of this particular folder, and I think if there is any doubt about that, counsel ought to make his offer and let the Court reserve the ruling upon it, unless you are satisfied with the record as you make it.

Mr. ALLEN.—I will ask Mr. Crosby, does the record show that was admitted in evidence?

The CLERK.—“5” was admitted.

Mr. ALLEN.—Was number “5” admitted in evidence?

The CLERK.—Yes, sir, number “5” is admitted.  
[204—155]

Mr. ALLEN.—The record of the Court, your Honor, shows number “5” is admitted.

The CLERK.—Yes, sir.

Mr. RIDDELL.—“4,” “7,” and “15” just went in.

The CLERK.—“4,” “7,” “14” and “15.”

On redirect examination the witness testified as follows:

(By Mr. ALLEN.)

Q. Mr. Spear, in answer to a question propounded to you by Mr. Morris, you stated that ten per cent of excess delivery was ordinarily permitted on any

(Testimony of Ray Spear.)

award made for the purchase of supplies for material of this character for the United States Government.

A. Yes, sir; we tried to confine it within ten per cent.

Q. Was that based upon some ruling of the department, or was that a general order which obligated you to follow?

Mr. SCHLESINGER.—If there is such a ruling we ask the ruling be produced.

Mr. ALLEN.—Upon what was the custom of the Department, or or the habit of the Department, based?

Mr. SCHLESINGER.—One moment. We object to that.

Mr. ALLEN.—Upon what was the action of your office with reference to bids, where an excess delivery in excess of ten per cent had been delivered, in the case of a rejection of any such award, what was the reason for your rejection, why would you do that?

A. In case of a delivery—that is, now, I am giving this as a general rule, no specific case, any excess of ten per cent over delivery, the contractor was usually informed that the material was on the yard subject to his orders. Our action depended [205—156] a great deal on the character of the material.

Q. You may explain what you mean by that.

A. Well, for instance, we might call for 50,000 pounds of bar metal, giving you that as an example, and it might be very heavy sizes, very large sizes, and the weight of any several pieces, or any number of it, might be excessive, we couldn't confine the con-

(Testimony of Ray Spear.)

tractor to a delivery of exactly 50,000 pounds. He might deliver 53,000 pounds on account of being obliged to cut, and that was considered perfectly legitimate to make a delivery of that sort.

Q. You have seen, Paymaster, boiler zinc of the size 12 by 6 by  $\frac{1}{2}$  inch, have you not?      A. Yes, sir.

Q. What is the approximate weight of one of those small pieces of zinc?

A. Oh, I should say between ten and fifteen pounds.

Q. Ten and fifteen pounds. If a requisition were made for 50,000 pounds of zinc for delivery at the yard, and they delivered 59,000 and some odd pounds, would that be, under your rule, an excess delivery?

A. Yes, sir, that would be considered going rather strong.

Q. Paymaster, if a requisition for toban bronze—incidentally, explain to the jury what toban bronze is.

A. Toban bronze is a metal containing a large percentage of copper, some nickel and tin. It is used where salt water comes in contact with metal; in other words, salt water has very little action on toban bronze.

Q. Recalling to your memory, the requisition yesterday offered in evidence, a certain kind of toban bronze pipe, was it not?

A. I believe those were rods; they are solid rods.  
[206—157]

Q. Solid rods. If a requisition were made for the delivery of 775 pounds of toban bronze rods of the character described in that requisition, the toban



(Testimony of Ray Spear.)

bronze requisition shown to you yesterday, and the contractor really delivered 1497 $\frac{1}{4}$  pounds of toban bronze, which is probably a hundred per cent in excess of the original award, would you consider that an excess delivery?      A. Most decidedly.

Q. You had some questions propounded to you by Mr. Morris with reference to what persons or individuals connected with the Navy Yard at Bremerton would initiate requisitions from time to time, and I believe you stated, in answer to his inquiry, that only requisitions could be initiated by departments where they had no material of that kind in your storehouse; is that true?

A. Yes, sir, or sufficient material in store.

Q. In other words, if you had in your warehouse, Paymaster, 52,000 pounds of zinc plate of size 12 by 6 by  $\frac{1}{2}$  inch, would any department in the navy yard have any power or right to initiate a requisition for plate of that kind with that lying in your warehouse?

Mr. SCHLESINGER.—I object to that as calling for an opinion of the witness.

The COURT.—Objection overruled. He may answer.

Mr. SCHLESINGER.—Exception.

A. If they had information before them of a very large demand in their own department they might suggest that a requisition be put through. They are, under the regulations, supposed to advise us whenever an excessive demand or an unusual demand is in sight in their own particular department. [207—158]

(Testimony of Ray Spear.)

Q. No one in the yard could have originated requisition number 438 for 50,000 pounds of zinc for delivery at the navy yard but Mr. Meyer, your principal clerk; is that true?

A. That is, for stock. No, sir, that would be from our office.

Q. Your attention is called, Paymaster, to the question of the time, the element of time in the delivery of zinc made to the yard about March 18th, 1908, or a matter of two weeks prior to the initiation of this new requisition for 50,000 pounds, and which, under the old delivery, there had already been delivered to you on March 18th, 50,000 pounds of the same material from a place in Illinois. You stated, in answer to the query directed to you, that that requisition was originally started in Washington about the month of December. Will you, from an examination of the files of that, unless you can do it from memory, tell how much of that time was occupied in the details incident to the way they do business sometimes in Washington and how much was actually occupied in the delivery of the material from the house in Illinois?

A. Well, the notice of award here shows that that requisition of December was not actually awarded until February the 4th, 1908, and it was delivered on March 18th.

Q. So a matter of—there is nothing there in the record to show when the zinc actually started on its way? A. There is a bill of lading here.

Mr. MORRIS.—Mr. Allen, may I ask a question?

(Testimony of Ray Spear.)

Mr. ALLEN.—You may when I get through.

Mr. MORRIS.—Right here on this question. There is a—

A. Yes, there is a paper here that purports to be a bill of lading, showing it was billed out of La Salle, Illinois, on [208—159] February 20th, 1908.

Mr. ALLEN.—And it reached the navy yard at what time?

A. The inspection call shows that it reached the navy yard on March 7th.

Mr. ALLEN.—Your attention, Mr. Spear, has been called to the stock card which is in the hands of the Department presided over by Mr. Lockwood, which is offered in evidence as Plaintiff's Exhibit Number "8." I call your attention to that card and ask you what the endorsement on the bottom "Limit of stock, 4,000 pounds, make requisition," what that means, as a matter of fact.

A. This is the storeman's indication, or rather it is practically its instructions to the storeman that whenever his stock of this particular item gets down to 4,000 pounds he is to make a request on the requisition clerk in the main office for more stock.

Q. In other words, 4,000 was a minimum, and if you had 52,000 pounds on hand at that date you would have what you ordinarily consider a considerable supply; isn't that true?

A. Yes, sir; that would be considered a very good supply.

Q. Calling your attention to that part of the card which has reference to the quantity supplied to dif-



(Testimony of Ray Spear.)

ferent battleships of the Atlantic Squadron, tell me, Mr. Spear, just what ships of the Atlantic Squadron were supplied with zinc plate, and the amount supplied to each.

A. The first ship here, the "Nebraska," which did, a week or two later, join the Atlantic Fleet—

Q. I am asking, pardon me, about those ships of the Atlantic Fleet; the "Nebraska" was explained the other day; I am asking about those ships which technically belong to the Atlantic Fleet. [209—160]

A. The "Kiersarge" drew 1500 pounds; the "New Jersey" drew 2,970 pounds.

Q. The "New Jersey" drew 2,970 pounds. All right.

A. Yes, sir. The "Rhode Island" drew 2,080 pounds.

Q. 2,080 pounds.

A. The "New Jersey" again drew 2,080 pounds.

Q. 2,080 pounds, "New Jersey."

A. The "Kiersarge" took 1,000 pounds again.

Q. "Kiersarge" a thousand.

A. The "Kiersarge" again 2,000.

A. That is all I find here.

Q. Calling your attention to the two ships, the "Washington" and the "Georgia," were they also attached to the Atlantic Battleship Squadron?

A. The "Washington" was the Pacific Fleet, the "Georgia" was attached to the Atlantic Fleet.

Q. The "Georgia" was attached to the Atlantic Squadron. How about the "Wisconsin," Paymaster?

(Testimony of Ray Spear.)

A. Up to the time of the Fleet's departure the "Wisconsin" had been assigned—she was assigned just as the Fleet left.

Q. Can you compute for the jury the aggregate amount of zinc taken by the Atlantic Battleship Squadron? A. I can.

Mr. SCHLESINGER.—We object to that, your Honor, please, as not being in any wise material or binding upon the defendant. The question is not how much they actually took, but how much it was thought they probably would require, that is the point in this case, not how much they actually consumed, and therefore we make this objection.

The COURT.—Let him answer. Objection overruled. [210—161]

Mr. SCHLESINGER.—Exception.

A. I said I can, yes, from this card.

Mr. ALLEN.—Will you do that for the jury, please? I will get you a piece of paper.

A. Do you wish me to exclude that amount of the "Nebraska"? She had not been assigned the time she drew this.

Q. She had not been assigned that time?

A. No, sir.

Q. She was not included in the Atlantic Battleship Squadron that time? A. No, sir.

Q. Well, take only the Atlantic Battleship Squadron. She hadn't been assigned then; as a matter of fact, they didn't know it then?

Mr. MORRIS.—How do you know they didn't know it?

(Testimony of Ray Spear.)

The COURT.—Proceed.

Mr. ALLEN.—Can you state, Paymaster, the total quantity of zinc of  $\frac{1}{2}$  inch by 6 by 12 which was furnished to the ships of the Atlantic Battleship Squadron? A. Yes, sir.

Q. What is that total amount?

A. The total is 12,080 pounds.

Q. Twelve thousand and eighty pounds. Your Honor, just a moment; I have lost a memorandum here.

The COURT.—Is that all of this witness?

Mr. ALLEN.—Just a moment. I lost a memorandum.

Q. An inquiry was directed to you yesterday by Mr. Morris with reference to the filing system which you inaugurated in the navy yard after this occurrence. Tell the jury why you put that filing system in the navy yard. [211—162]

A. When I reported there on the 2d day of January, 1908, I found the filing records, particularly was it with reference to correspondence and classification of material, there had been some attempt to keep some sort of a classification, but it was not up to date, and I found that Mr. Meyer was keeping most of the transactions in his head. He was very accurate about it and did it very well, but the fact remained that if a stranger should drop in there, or Mr. Meyer dropped dead, the office records would have been very incomplete.

Q. That was the reason for the inauguration of the filing system you speak of? A. Yes, sir.



(Testimony of Ray Spear.)

Q. Do you know, as a matter of fact, Mr. Spear, whether any supply house on the Pacific Coast carried any stock of zinc plate of this particular kind and character, 12 by 6 by  $\frac{1}{2}$  inch, in the sum of 50,000 pounds?

Mr. SCHLESINGER.—That is, of your own knowledge, Mr. Spear.

Mr. MORRIS.—Answer it yes or no.

Mr. VANDERVEER.—It is immaterial whether any house did or not. It could be supplied in a dozen smaller orders, filled by smaller orders and smaller lots until the whole of it was made up.

Mr. SCHLESINGER.—My objection is the witness is not supposed to know whether or not houses had metal at hand at that time, unless it is shown he had personal knowledge acquired by personal inspection. That is our objection.

The COURT.—He may answer the question as to the knowledge he received.

Mr. SCHLESINGER.—If he knows.

Mr. SCHLESINGER.—Exception. [212—163]

Mr. ALLEN.—Read the question.

Q. (Question repeated.)

A. My recollection is—

Mr. MORRIS.—We submit he answer yes or no.

Mr. SCHLESINGER.—Whether you know.

A. They did not usually have that quantity of material on hand.

Q. (Question repeated.)

The COURT.—He may answer.

(Testimony of Ray Spear.)

A. They usually did not have that quantity on hand.

Mr. SHIPLEY.—I object as not responsive to the question.

Mr. MORRIS.—We move to strike the answer, your Honor please.

Mr. SHIPLEY.—The question is as to his knowledge.

The COURT.—Proceed.

Mr. SHIPLEY.—Exception.

Mr. ALLEN.—You were in the market, and were down at Mare Island as Paymaster of the United States Navy, you were purchasing all kinds of supplies, were you not? A. Yes, sir.

Q. It was the business of you and your office to ascertain the quantity and the kind of the material that could be had, in case you wanted it, isn't that true? A. Yes, sir.

Mr. MORRIS.—Your Honor please, I move to strike the answer of the witness to the previous question from the record.

The COURT.—I already denied it. It is in the record.

Mr. MORRIS.—Exception.

Mr. ALLEN.—From your experience as an officer in the navy, if a requisition came to you from any other office for a delivery within five or fifteen days for the furnishing of [213—164] a large quantity of such zinc plate, 50,000 pounds in quantity, and that award was made on the 15th day of April, 1908, and the material was actually delivered on May 9th,

(Testimony of Ray Spear.)

1908, for use in the latter part of May in the same year, there couldn't have been any particular reason, could there, from your experience as a Paymaster, in limiting the time of delivery from five to fifteen days.

Mr. KERR.—I object as argumentative.

The COURT.—Objection sustained. That is for the jury to draw from the testimony in the case.

Mr. ALLEN.—Do you know, Mr. Spear, of any reason, if this material should be used for the Atlantic Battleship Squadron, to arrive, as you knew in the office at that time, in the latter part of May, 1908, do you know of any reason, from your experience as a Paymaster, why the period of delivery should be limited to five short days, or even fifteen days?

Mr. SCHLESINGER.—Object as calling for the opinion of the witness and asking for his opinion.

The COURT.—He may answer.

Mr. SCHLESINGER.—Exception.

A. I do not recall at this time why the time of delivery was short in this particular case.

Mr. ALLEN.—Do you know of any reason?

Mr. SCHLESINGER.—I object as incompetent, irrelevant and immaterial.

A. The question isn't proper.

Mr. ALLEN.—Mr. Spear, for a number of days or weeks prior to April 1st, 1908, you contemplated the arrival of the Atlantic Battleship Squadron; as a matter of fact, Mr. Spear, I believe you testified on direct examination on the point, as [214—165] a matter of fact you knew with some certainty way along in January about the time the fleet would ar-



(Testimony of Ray Spear.)

rive in Seattle, did you not, approximately the time?

A. Approximately, yes, sir.

Q. And you were preparing then, from January, continuously through down to the date the fleet arrived in Seattle; isn't that true? A. Yes, sir.

Q. Covering a period of January, February, March, April, May and the latter part of May?

A. Yes, sir.

Mr. ALLEN.—I think, your Honor, that is all.

On recross-examination the witness testified as follows:

(By Mr. SCHLESINGER.)

Q. Mr. Spear, you don't know how much metal or zinc this Illinois concern had on hand between April and May of 1908, do you? A. No, sir.

Q. Now, do you know, from personal inspection or examination, how much zinc any other concern dealing in metal had on hand between the first day of February, 1908, and the first day of May, 1908, from personal inspection? A. Well, the fact remains—

Q. Would you please answer my question, Mr. Spear, if you can?

A. I have made no examination of their warehouses. I know that we were unable to obtain from local dealers metal in that quantity. For that reason, as a rule, they were advertised in Washington.

Q. Do you know what efforts the Department at Washington made [215—166] to obtain this material for a second requisition, if any?

A. No, sir; they didn't make any. They left that to the Purchasing Pay Office at Seattle.

(Testimony of Ray Spear.)

Q. Do you know whether or not any official of the Department in Washington made any effort to obtain the same material from this same Illinois factory? A. No, sir, I do not.

Q. You do not. That is all.

**[Testimony of George Edward Lockwood, for Plaintiff.]**

GEORGE EDWARD LOCKWOOD, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. RIDDELL.)

My full name is George Edward Lockwood. I live at Bremerton. I am storeman in the metal storehouse over there at the Puget Sound Navy Yard. I know the defendant Meyer. He came to the yard before I did. I started to work in that department in the first part of April, 1906, I think it was. Mr. Meyer was Chief Clerk in Mr. Spear's office. I think there was probably ten or twelve clerks, something like that; all white men; there were probably twelve or fifteen laborers and packers all told. In my position as storeman there in the metal warehouse, I handled that stock of zinc plates. I know what Plaintiff's Exhibit "8" is. I recognize this card, all right. It is the stock card for 1½ by 6 by 12 zinc plates in the storehouse. On that stock card I would put down metal when it came in and as the metal went out of the office I would debit it against the card. [216—167] That is the original record on that card.

(Testimony of George Edward Lockwood.)

Q. Now, look on that card, and that shows that on the 2d of April, 1908, you had on hand how much metal, how many pounds of  $1\frac{1}{2}$  by 6 by 12 zinc plates.

A. What date?

Q. The 2d of April; take the 1st of April.

A. Well, that date doesn't—yes, the 2d of April we had 54,337 pounds on hand.

Q. Now, the last date before that is what?

A. Last date before that is March the 18th.

Q. And you had how much on hand?

A. 52,404 pounds.

Q. 52,404 pounds? A. Yes, sir.

Q. Now, you were in charge of the warehouse at the time you had that 52,000 pounds on hand?

A. Yes, sir.

Q. Now, you next received how much?

A. We received—next receipt was 1,933 pounds.

Q. When? A. The 2d day of April.

Q. On the 2d day of April, 1908. Did you originate the requisition on which that 1,900 pounds came in there?

Mr. MORRIS.—We object to that. It is taken for granted this witness had no authority to originate any requisition.

Mr. RIDDELL.—Mr. Meyer was the Chief Clerk at the navy yard at that time in the Storekeeper's office at that time? A. Yes, sir.

Q. And did Mr. Meyer ever come around the metal warehouse?

A. Yes, he came around quite frequently. [217—168]



(Testimony of George Edward Lockwood.)

Q. Did he ever examine the card?

A. Well, he did on some occasions.

Q. You have seen him, have you?      A. Yes, sir.

Q. Now, tell the jury when the stock of zinc in the storehouse, in that metal storehouse would run low; tell the jury who would be the first man to be notified of it.

A. Why, it was customary to notify Mr. Meyer at that time.

Q. Who would notify him?

A. Well, I would notify him if anyone did, if he didn't look after it himself.

Q. Now, did you, having that 52,000 pounds on hand, did you notify him to start a requisition for that 1,900 pounds?      A. No, sir.

Q. Now, what is the first expenditure against that zinc after the second day of April?

A. The first expenditure was made on the 13th day of April, 2,000 pounds issued to the cruiser "Washington."

Q. Now, Mr. Lockwood, just explain to the jury under what circumstances those charges, those expenditures would be noted on the card.

A. Well, the ship requiring these zincs would make what we call a requisition. That requisition would come through the General Storekeeper's office, and would come down to the storeman in due time, and the storeman would take that and issue the amount of zinc called for on the requisition, and make an entry showing the date, the name of the ship and the number of the requisition and the quantity issued.

(Testimony of George Edward Lockwood.)

Q. On this card?

A. On this card; yes, sir. [218—169]

Q. Suppose, now, that the ship wasn't in the harbor at that time, supposing the ship wasn't at the yard at that time when that requisition came in, what was done?

A. We would take the very same procedure. We would simply set the goods aside, assemble the goods and let them there until the ship arrived and called for them.

Q. Would you charge them at that time against the card? A. Yes, sir.

Q. How soon after the ship's requisition reached the yard was it charged against that card?

A. Well, in most every case I would charge it against the card the same day that I received the requisition, although the requisition might have been in the General Storekeeper's office three or four days, or weeks, before I would get it.

Q. It couldn't be over a week, though?

A. Well, I don't think it would be; that would be my idea.

Q. That was on the 13th of April? A. Yes, sir.

Q. The next charge is on the 18th of April to the "Nebraska," I believe? A. Yes, sir.

Q. And on the 20th of April to the "California"?

A. Yes, sir.

Q. And the 25th to the "Colorado"?

A. Yes, sir.

Q. On the 30th to the "St. Louis"? A. Yes, sir.

Q. Now, then, on the 7th of May there is a charge

(Testimony of George Edward Lockwood.)

there of 1,500 pounds to the "Kearsarge"? [219—169½] A. Yes, sir.

Q. Besides these vessels in the Pacific Squadron that I have named there, was any requisition received, according to that record, for ½ by 6 by 12 zincs for the Atlantic Battleship Squadron until the 7th of May?

A. No, I hadn't received no requisition. The first requisition that I received for any of the ships of the Atlantic Squadron was the 7th day of May.

Q. When the "Kearsarge" took 1,500 pounds?

A. Yes, sir.

Q. What is the date of the first entry on that stock card, Mr. Lockwood?

A. The first entry? Well, the first entry on the stock card is December 30th, 1907.

Q. December 30th, 1907. Now, on March 12, 1908, you got 50,158 pounds in stock. A. Sir?

Q. On March 12th, 1908, you got 50,158 pounds in stock? A. Yes, we received that.

Q. You received that?

A. Had some on hand at that time.

Q. On March 12th you received that? Now, after you received that 50,000 pounds did you make any requisition, or did you notify Mr. Meyer that the amount of 38,087 pounds, or any other amount, was needed by you? A. No, sir.

Q. After the receipt of that 50,000 pounds you recall the conditions of the yard at that time, do you, Mr. Lockwood? A. Of this receipt in March?



(Testimony of George Edward Lockwood.)

Q. Yes, after the receipt of that 50,000 pounds in March. [220—170]

A. Well, of course, we knew at that time that the Atlantic Fleet was coming around, and, of course, we thought naturally that we would probably need considerable boiler zinc, just the same as we would need other stock.

Mr. MORRIS.—What is that answer? Repeat it.

A. I say, at that time, at the time we received this 50,158 pounds, we knew that the Atlantic Fleet was coming around, would be there some time in the summer, and, of course, we knew we would require a big amount of stock of all kinds, as a matter of fact, to supply the ships.

Mr. RIDDELL.—Now, at that time, Mr. Lockwood, was the amount of 3,000 or 4,000 or 5,000 pounds a sufficient amount to supply your needs as you knew at that time?

Mr. MORRIS.—We object to that question as being incompetent and immaterial, what the supplies were then. They were preparing for the future, anticipating the future.

The COURT.—He may answer the question. Proceed.

Mr. MORRIS.—Exception.

Mr. RIDDELL.—From what you knew at that time would an amount of 3,000 or 4,000 or 5,000 pounds had filled that emergency for the battleship fleet?

A. No, sir, I wouldn't consider that it would.

Q. Well, could it have been considered that it

(Testimony of George Edward Lockwood.)

would under those circumstances?

Mr. SCHLESINGER.—That is asking for an opinion of this witness, your Honor please, as to what might have been required as to future conditions, and object to it.

The COURT.—He may answer the question.

Mr. SCHLESINGER.—Exception.

Mr. RIDDELL.—There were eight ships of the battleship fleet [221—171] at dock at that yard?

A. I think there were something like sixteen.

Q. Could an amount of 5,000 pounds of zinc, three or four or 5,000 pounds of zinc, been enough for those sixteen vessels?

Mr. SCHLESINGER.—Your Honor please, our objection goes to that. How could this witness have known until the arrival of the battleships how much they actually would take? This was an order in anticipation of requisitions.

The COURT.—This is purely his opinion based upon his experience in the yard there.

Mr. KERR.—They never had a fleet here before. It was extraordinary.

The COURT.—Proceed.

Mr. SCHLESINGER.—Exception.

Mr. RIDDELL.—Could that amount have been sufficient? A. No, sir.

Mr. MORRIS.—The Court has sustained an objection.

The COURT.—No, I haven't. I said he may answer. I said this is simply asking him for his opinion based upon his experience there.

(Testimony of George Edward Lockwood.)

Mr. MORRIS.—We will object to this witness' opinion.

The COURT.—It is already so ruled and the objection is already in the record.

Mr. MORRIS.—Well, there is one reason I want to state.

The COURT.—Proceed.

Mr. MORRIS.—For the reason he is not here as an expert. It is apparent he has no knowledge on these particular matters, and therefore his opinion is entirely irrelevant, incompetent and immaterial.

The COURT.—Overruled. Note an exception. Proceed. [222—172]

Mr. RIDDELL.—From the conditions as they were known to you and to Mr. Meyer in the yard at that time, could any such amount as 3,000 or 4,000 or 5,000 pounds of  $\frac{1}{2}$  by 6 by 12 zinc have been sufficient? A. No, sir.

Mr. SCHLESINGER.—Our objection to that is it is not what the conditions were when the vessels were in dock.

The COURT.—I don't care for any argument upon this.

Mr. SCHLESINGER.—Our objection to this is it calls for a conclusion of the witness as to what was in Mr. Meyer's mind at that time.

The COURT.—I said, gentlemen, I didn't care about any argument. I say, this witness could not possibly have known what was in Mr. Meyer's mind. Objection sustained to the question last propounded.

Mr. RIDDELL.—Now, your Honor, may I tell the



(Testimony of George Edward Lockwood.)

Court the purpose of this inquiry?

The COURT.—Propound another inquiry.

Mr. RIDDELL.—I want to show the Court the purpose of this inquiry as to Mr. Meyer's mind. It is not as to what was in Mr. Meyer's mind; it is as to Mr. Meyer's knowledge at that time.

The COURT.—I don't care for any argument. I say, the objection is sustained because he couldn't read Mr. Meyer's mind, but he can testify as to what conditions are.

Mr. RIDDELL.—Mr. Lockwood, I will put the question to you this way, now, and hope we may get through with it.

Q. From the conditions as they existed in the yard at that time, as they were generally known to be in the storekeeper's office, could such an amount as 3,000 or 4,000 or 5,000 pounds [223—173] of 1½ by 6 by 12 zinc been sufficient for this Atlantic Battleship Squadron? A. I have answered that question no.

Q. Did Mr. Meyer ever have any conversation with you, Mr. Lockwood, about the weights of material to the contractors?

A. Well, that question did come up a few times there.

Q. Just tell the jury the circumstances.

A. Well, there was times there when material came in, when we received new stock. It was my duty to assist the inspector—

Q. I mean in the year 1908?

A. Well, that is what I am trying to do. It was my duty to assist the inspector in weighing up and

(Testimony of George Edward Lockwood.)

checking up all material, to see we had the material that the Inspection *Call* for, and to see that we had the proper quantities. And, of course, there was times that we found shortages, the contractor would ship a certain lot of stock whatever it might be, we would weigh it up or check it up, whatever it might be, and we would find a shortage, he hadn't sent the amount that he claimed. Well, of course, the inspector would report a shortage, and, of course, that caused an argument a great many times, and Mr. Meyer spoke to me a few times in regards to the weight, and he told me that he thought that the contractor's weights were right, the fact they had their scales tested and were weighed by competent men, and that he thought our scales were wrong. That is about the extent of that, as well as I remember.

Q. You remember the names of any of the contractors?

A. Well, I remember one occasion where there was a shortage, there was quite a little argument about it. That was shipment [224—174] of what we call inga tin. That was furnished, I think, by the Great Western Smelting & Refining Company.

Q. Did anybody come over to your yard afterwards from the Great Western?

A. Yes, sir, a representative came over and we re-weighed this particular shipment.

Q. Did you ever get any excess deliveries?

A. Yes, we got excess deliveries.

Mr. MORRIS.—Object as incompetent, irrelevant

(Testimony of George Edward Lockwood.)

and immaterial, and it isn't shown it has any bearing on this case.

Mr. RIDDELL.—All right, I will put it this way:

Q. Did you ever get any excess deliveries from the Great Western Smelting & Refining Company in 1908?

Mr. SCHLESINGER.—We object as immaterial, incompetent and irrelevant.

The COURT.—He may answer.

Mr. SCHLESINGER.—Exception.

A. We did.

Mr. RIDDELL.—Do you know how often?

Mr. SCHLESINGER.—We object to that as immaterial.

The COURT.—Overruled.

Mr. SCHLESINGER.—Exception.

A. Why, we got excess deliveries on two or three different occasions, as well as I can remember now. That is quite a while ago, and, of course, some things that I have forgotten.

Mr. RIDDELL.—Mr. Lockwood, at the time that this 59,575 pounds of zinc came into the storehouse, into your storeroom, did you know that that zinc was coming?

A. No, sir.

Q. At the time that the zinc was ordered, on the first of April, [225—175] 1908, was any fact known generally throughout the yard, or was there any fact within your knowledge at that time, which would require that that zinc should be furnished on fifteen day delivery?

Mr. MORRIS.—I object to the question on the



(Testimony of George Edward Lockwood.)

ground it is irrelevant, it is immaterial and it is incompetent, and it does not tend to prove or disprove any issues involved in this proceeding. The question calls for an opinion of this witness.

The COURT.—This witness has hardly placed himself in a position to testify to a conclusion in a way in which it is sought. I think the objection should be sustained.

Mr. RIDDELL.—Very well, your Honor.

Q. Mr. Lockwood, you were in charge of the storehouse at that time? A. Yes, sir.

Q. You had charge of the supply—you were the storeman over the supply of  $1\frac{1}{2}$  by 6 by 12 zincs?

A. Yes, sir.

Q. At that time were you in possession of the general information which was current in the yard as to the necessities for the supply of an amount of zinc so great as 59,000 pounds.

Mr. SCHLESINGER.—We object to that.

Mr. RIDDELL.—That is preliminary.

The COURT.—Yes or no.

Mr. SCHLESINGER.—Exception.

Mr. RIDDELL.—Were you in possession of facts from general knowledge around the yard as to the necessity for an amount of zinc such as 59,000 pounds? Just answer yes or no.

A. No, sir. [226—176]

Mr. RIDDELL.—Did you have at that time in the yard, or at that time did you know in the yard of any call that would be made for 59,000 pounds of zinc

(Testimony of George Edward Lockwood.)

calling for a fifteen day delivery?

A. No, sir.

On cross-examination the said witness testified as follows:

(By Mr. SCHLESINGER.)

Q. Mr. Lockwood, you have stated to these gentlemen that at times there were excessive deliveries. Is it not also true that at times there were shortages?

A. Why, yes, there is times that we had shortages.

Q. And isn't that true with respect to the deliveries from a large number of concerns, different people?

A. Well, yes, that happened, of course, with different firms.

Q. In other words, you didn't draw any improper evidence because there happened to be an excess in deliveries, nor did you draw any improper inference because there happened to be a shortage in the matter of deliveries?

A. I took notice to an excess delivery where there was a great deal more delivered than the requisition called for.

Q. What was done with the excess in cases of that character?

A. Well, in some cases they were accepted and other cases they were rejected for the time, and probably later a new requisition would be made out, or they would be accepted in some way.

Q. In other words, they were either accepted or rejected just as the conditions demanded?

A. Yes, sir. [227—177]

(Testimony of George Edward Lockwood.)

Q. Did you, before the arrival of the fleet at this port, were you notified by any of the commanding officers of those vessels how much zinc would probably be required? A. No, sir.

Mr. SCHLESINGER.—That is all.

On cross-examination by Mr. MORRIS the said witness testified as follows:

Q. Mr. Lockwood, have you there present that card you were holding in your hand a moment ago?

A. Yes, sir.

Q. That is the card that is commonly known as the stock card that is commonly known as the stock card?

A. Yes, sir.

Q. And you mean by stock card, do you, that from that card you can show the minimum amount of stock that is on hand in the storeroom?

A. Well, it shows a balance at all times.

Q. Shows the balance at all times?

A. Yes, sir.

Q. Is there any memorandum on Plaintiff's Exhibit "8," being the stock card, that shows the minimum supply of the particular materials contained in the storeroom?

A. Well, there is what they call the limit of stock. That means when the stock gets down to that point to *re-cover*. I think that was the intention of putting that on the card.

Q. I think I understand what you mean. Let me see if I can ask you. You say the limit of stock?

A. Yes, sir. [228—178]

Q. If we would speak of the maximum that would



(Testimony of George Edward Lockwood.)

be the greatest amount kept?      A. Yes, sir.

Q. And if we speak of the lowest that would be the minimum amount?      A. Yes, sir.

Q. And you mean by that that you had, as I understand, according to that card, not from your evidence so much, but from Officer Spear's, that on Plaintiff's Exhibit "8" there was a minimum amount designated there relative to the stock of boiler zinc such as is involved in this particular indictment; is that right?

A. You mean on this particular stock card?

Q. Yes, sir. Have you any minimum on Plaintiff's Exhibit "8" for the particular kind of boiler plate that is involved in this indictment?

A. Well, I don't know just what you mean by exhibit "8."

Mr. RIDDELL.—That is exhibit "8" you have in your hand.

A. Oh, that is it. Well, we have a limit of stock that was put on by somebody; I don't know who put it on.

Q. Now, what is the limit?

A. The limit of stock?

Q. For zinc plate, or boiler plate, and my question now is directing your attention to the matters involved in the indictment which these defendants are here to answer.

Mr. ALLEN.—I submit this man probably doesn't know anything about the indictment.

The COURT.—Better make it more specific. Refer to specific quantities or kind.

(Testimony of George Edward Lockwood.)

Mr. MORRIS.—Have you a limit for the amount of zinc plate, [229—179] boiler zinc, upon the card which you now hold in your hand?

A. Yes, sir.

Q. You understand what I mean?

A. Yes, sir.

Q. That limit that is placed there, you shall not allow that stock to go below the limit as shown on the card?

A. Well, it doesn't exactly mean that. It means when your balance is down to limit that you are to re-order at that time.

Q. Re-order at that time?      A. Yes, sir.

Q. Now, sir, will you kindly state to this jury what the lowest limit of stock was to be, as shown by that card, before you would notify the storekeeper that zinc of the particular kind was required?

A. Well, the limit marked on this card, I don't know who put it there—

Q. I am not asking you that.

A. Is 4,000 pounds.

Q. 4,000 pounds. Now, sir, directing your attention again to this card, can you tell this jury how many pounds of zinc was delivered by the storeroom over which you had supervision during the month of March?      A. Was delivered to the yard?

Q. Was delivered from the storeroom to any place, taken out of your stock?

Mr. ALLEN.—During what period?

Mr. MORRIS.—March, I think it is.

A. Well, there was only one issue made in the

(Testimony of George Edward Lockwood.)

month of March, 1908; that was for 1804 pounds.

Q. 1804 pounds? [230—180] A. Yes, sir.

Q. How many were made in April of 1908?

A. About 25,000 pounds.

Q. 25,000 pounds. Suppose the day before that 25,000 pounds had been demanded or requisitioned, or called for, by somebody, the stock of zinc was down to the minimum of 4,000 pounds, what would have been your condition?

A. Well, we couldn't have filled the orders.

Q. You couldn't have filled the orders?

A. No, sir.

Q. And if calls had come, when I speak of calls I mean calls or requisitions, had come, from the Pacific Fleet, which was then at the navy yard,—

A. Well, the Pacific Fleet—

Q. What is that?

A. The Pacific Fleet was not—oh, the Pacific Fleet, yes, sir.

Q. Yes. If the Pacific Fleet had called for 25,000 pounds of this particular zinc, and your stock was down to the minimum, you would have been compelled to have waited until you could have gotten a supply of zinc to fill that requisition, would you not?

A. Yes, sir.

Q. And is it not a fact that the fleet would have been without that supply for a period from eight to twelve or twenty weeks?

Mr. ALLEN.—Oh, your Honor, I submit that isn't proper cross-examination.

Mr. MORRIS.—You object to it?



(Testimony of George Edward Lockwood.)

Mr. ALLEN.—I do object to it, your Honor. It isn't proper [231—181] cross-examination.

The COURT.—Give me the ground of your objection.

Mr. ALLEN.—As I understand it, he is theorizing now with this witness. I object to it on the ground it is immaterial, incompetent and irrelevant. In explanation of that objection I suggest he is offering this witness to submit him a hypothetical question in regard to facts which the evidence shows did not, does not and possibly could not exist.

The COURT.—I think the objection should be sustained as not proper cross-examination. The Court is in doubt about that being a proper phase of the examination in chief.

Mr. MORRIS.—Note an exception.

Q. I understand that you were keeper of the store-room April, 1908? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. And on that stock card which you find there, on that stock card you find a writing limiting the minimum amount of this particular zinc which was to be kept in stock?

A. Well, I will answer that question by saying that limit had been placed on there at some previous date before we had any idea that the Atlantic Fleet was coming around.

Q. Well, it was placed on there before you dreamed the Atlantic Fleet was coming? A. Yes.

Q. But any such limit as that, in anticipation of the Atlantic Fleet, would be an outrageous assumption.

(Testimony of George Edward Lockwood.)

ion, would it not? A. Yes, sir. [232—182]

Q. Sir? A. Yes, sir.

Mr. MORRIS.—That is all.

On redirect examination by Mr. RIDDELL the  
aid witness testified as follows:

Q. In regard to the over-deliveries that occurred  
over there at the yard: Counsel asked you, Mr.  
Schlesinger, if you drew any unfavorable inference  
from the fact that those over-deliveries were made  
here. Did you answer that question?

Mr. SCHLESINGER.—We object to that as not  
being redirect examination.

The COURT.—He may answer the question.

Mr. SCHLESINGER.—Exception.

A. Well, of course, when an excess of delivery  
came along that amounted to any amount, why, of  
course, I naturally noticed it, and I thought, of  
course, it was strange in a great many cases there  
was such a large amount of excess material sent in.

Q. And were there occasions when that occurred?

Mr. SCHLESINGER.—Your Honor, we object to  
that on the ground it is not redirect examination and  
gone into on chief.

Mr. RIDDELL.—Counsel asked him whether  
there were any such excess deliveries there as to ex-  
cite his comment. He says yes, when a delivery  
would occur there which was very excessive it would  
excite his comment. Now, I want to know if there  
were any such deliveries there at that time. That  
completes the injury, you see, on this particular  
point.

(Testimony of George Edward Lockwood.)

The COURT.—He may answer that question.  
[233—183]

Mr. SCHLESINGER.—Exception.

A. There was some occasions of that kind.

Mr. RIDDELL.—Take the witness.

On recross-examination by Mr. SCHLESINGER the said witness testified as follows:

Q. I want to ask you one further question, Mr. Lockwood. Wherever excesses of that kind occurred the excess quantity was either rejected or subsequently accepted, isn't that true, as you testified a few moments ago?

A. Yes, it was either accepted or rejected. It had to be either; they couldn't dispose of it any further way.

Q. And, of course, before a rejection was made, or an acceptance made, the particular articles were inspected by the board?

A. Inspected by a sub-inspector, what they call a sub-inspector.

Q. And the Government only paid for the actual amount it received?

A. Well, they paid for whatever amount they choose to pass. If they passed the full amount, of course, they paid for that; if they didn't they only paid for the amount they passed.

Mr. SCHLESINGER.—That is all, Mr. Lockwood.

On redirect examination by Mr. RIDDELL the said witness further testified as follows:

Q. Do you know whose desk the Inspector's report came back to?



(Testimony of George Edward Lockwood.)

A. Well, the Inspector's report went—the sub-inspector turned that in to the Inspecting Officer.  
[234—184]

Q. What do you mean by the “sub-inspector”?

A. Well, they have what they call a sub-inspector that comes around to the storehouse and checks up all material for quantity and quality, and so on, and he turns his report over to the Inspecting Officer, who is a naval officer.

Q. And what does the Inspecting Officer do?

A. The Inspecting Officer uses his judgment, then, in regard to passing. He usually takes, I think, whatever the sub-inspector turns in to him.

Q. Then, do I understand, Mr. Lockwood, that when the Inspectors, this Board of Inspectors, should pass this material they don't look at it, but take the word of this clerk?

A. Well, it is a fact there is a great amount of material passes that the Inspecting Officer himself doesn't see.

**[Testimony of A. R. McNeil, for Plaintiff.]**

A. R. McNEIL, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. RIDDELL.)

My full name is A. R. McNeil. I live at Port Orchard. I am employed by the United States Navy Yard at Bremerton. I have been employed there since January, 1908. I know the defendant Meyer. At that time he was Chief Clerk in Paymaster

(Testimony of A. R. McNeil.)

Spear's Office. I was a clerk in that office. Mr. Meyer had ten or twelve clerks under him; I don't know the exact number. They were all white men. He had about twelve or fifteen laborers under him. I was stationed at the time in the bookkeeping section. [235—185] Mr. Meyer was in the general office on the second floor of the building. My desk was about twelve or fifteen feet from Mr. Meyer. Part of the time there was a partition between the two desks. I can't state the exact time it was there, however, but I should judge about April 1st, 1908. While that partition was there the men would have to go about twelve to twenty feet from Mr. Meyer's desk to my desk. While the partition was there between his desk and my desk it did not make the distance one would have to go from one desk to the other any longer; there is a door right in the partition, there. In the bookkeeping section I had charge of the stock ledgers. I know what that is, Plaintiff's Exhibit "2"; that is a page from the general stock ledger. It is my handwriting. These two items on the lower side (showing).

Q. Those two items on that side (showing)?

A. And a few of these on the other side are, the first three, I think. There was the record of my office of which Mr. Meyer was chief. He was my superior. I kept that under his direction. He was chief of the office. Of course, we had a chief bookkeeper in charge of that particular section. I did not have an index to that book; the book itself is the index.

Q. Suppose you wanted to find  $\frac{1}{2}$  by 12 by 6 zinc,

(Testimony of A. R. McNeil.)

how would you have found it in that book?

A. You have what you call a naval classification at that [236—186] time divided into thirty-one classes, and all metals were in Class 21. And you would naturally turn to book 21, which furnished Class 21, as being the class in which metals were, and you would know that zinc was in it, and the classes were indexed from A to Z in the book. You simply turned to zinc; these are zinc plates,  $\frac{1}{2}$  inch, and you look down the column and see zinc plates  $\frac{1}{2}$  by 12, and look down the column and see it right on the page.

Mr. RIDDELL.—How long would it have taken you to have gone through that index and found that item, the top item there? I just call your attention to the item on Plaintiff's Exhibit "2," date 3/12/08; what does that mean?

A. March 12th. The entry was made March the 12th.

Q. Requisition or contract number 10-8308?

A. Well, that is requisition 10 S. E., contract 8318.

Q. The call, or inspection, or notice number?

A. 1916.

Q. For—

A. Well, it is 12 by 6; that is simply the size.

Q. That is the size on the book? A. Yes, sir.

Q. And the next column? A. 50,158 pounds.

Q. 50,158? A. Yes, sir.

Q. Unit price is what? A. .713.

Q. Per what? A. Per pound.

Q. .713 cents per pound. Now, when Mr. Meyer



(Testimony of A. R. McNeil.)

went to make [237—187] a requisition for 1½ by 6 by 12 zinc plate subsequent to the 12th day of March, 1908, how long would it have taken him to have found that price?

A. To obtain the information from that book?

Mr. RIDDELL.—Yes.

A. Possibly the time it would take the book down and look to that place, possibly not to exceed two or three minutes.

Q. That book was under—well, some was in your handwriting. Was Mr. Meyer familiar with that book? A. Why, I should think so, yes.

Q. Did you ever seen him using it?

A. I can't say he used that book, but I have seen him use others.

Q. In that series?

A. Well, now, from 1 to 33. That was book 21.

Q. While you were there, Mr. McNeil, you said about the first of April, 1908, that partition was taken down?

A. Somewhere in there, yes; I wouldn't be specific as to the day.

Q. And from that time on, for a time, your desk continued to be within 12 or 15 feet of Mr. Meyer?

A. About, yes.

Q. Who made out the requisitions, or the type-written part?

A. Why, Mr. Meyer and his assistant, Mr. Reed, at times; others when necessary.

Q. What do you mean by that?

A. Well, when he had an overflow of work he

(Testimony of A. R. McNeil.)

would get some one else to do it.

Q. He could designate anybody else?

A. Yes. [238—188]

Q. Who fixed, as a general practice in that office at that time, who fixed the time of delivery on those requisitions?

Mr. SCHLESINGER.—That is calling, your Honor please,—

Mr. RIDDELL.—I am asking him if he knows.

Q. Do you know who fixed the time of delivery on those requisitions?

A. Well, I wouldn't care to state on all requisitions.

Q. Well, state as a general rule.

A. Well, Mr. Meyer.

Q. Now, Mr. McNeil, was there any record kept in your office of prices, outside of this ledger, these thirty-three books, of which Plaintiff's Exhibit "2" is a copy?      A. Why, they kept vouchers, yes.

Q. Well, I mean is there any other method you have, or had at that time, in that office for obtaining prices?

A. In the bookkeeping office or the other?

Q. In Mr. Meyer's office, or in the General Storekeeper's office?      A. Catalogues.

Q. Of what?

A. Oh, of any material we had in the catalogue file.

Q. You know Paymaster Spear?      A. Yes, sir.

Q. Do you know whether or not, Mr. McNeil, about the first day of April, 1908, Paymaster Spear was

(Testimony of A. R. McNeil.)

accustomed—do you know the method he was accustomed to use in signing requisitions and other papers that were brought to him for his personal signature?

Mr. SCHLESINGER.—Now, your Honor, please, we object to that on the ground that Paymaster Spear himself has been upon [239—189] the stand and has given his method; and this is calling for his opinion as to what method Paymaster Spear was pursuing.

Mr. RIDDELL.—Your Honor, it is not calling for his opinion at all; it is calling for a fact as it existed in the office at that time; and as it was known to this defendant Meyer when he went to prepare a requisition. If he went to prepare a requisition for \$625, he knew Mr. Spear would sign it and thumb it up like that (showing). That was a—

The COURT.—Read the question. (Question repeated.) He may answer.

Mr. SCHLESINGER.—Exception.

The COURT.—If you know.

A. I have seen him sign them, and Mr. Meyer would carry them in, or put them in in the usual way, and Mr. Spear would sign them, and they would be mailed to the Navy Pay Office.

Q. Who put the estimated cost in the requisitions?

A. Which requisitions?

Q. On the requisitions for stock.

A. Naval Supply or—

Q. Yes.

A. Why, it was done in the office. As far as I



(Testimony of A. R. McNeil.)

know, Mr. Meyer did it. He had the catalogues there, and so forth, to take it from.

Q. And this Plaintiff's Exhibit "2" also?

A. On this (showing)?

Q. No, the other paper you had there.

A. Oh, the stock ledger sheet?

Q. Yes.

A. That is just a part of the stock ledger. There is no [240—190] prices estimated on that; that is the price that was regularly paid.

Q. That it was actually bought for?

A. Yes, that it was actually bought for. There is no estimated price there.

Q. That was what it cost to the yard, the navy yard?

A. Yes, sir.

Q. Delivered at the yard?

A. Delivered f. o. b., yes.

Mr. RIDDELL.—That is all.

On cross-examination by Mr. MORRIS, the said witness testified as follows:

Q. Mr. McNeil, you had ten or twelve clerks in the Storekeeper's Department at the navy yard in April, of 1908, about that time?

A. About that many; yes, sir.

Q. At the present time you have about thirty clerks?

A. I don't think there are thirty, Mr. Morris; about twenty-three, I think.

Q. About twenty-three clerks. At the time that you had these ten or twelve clerks in April, the Pacific Fleet was at the navy yard?

(Testimony of A. R. McNeil.)

A. Pacific Fleet?

Q. Yes, sir; and thereafter the Atlantic Fleet came.

A. Oh, yes; they come and go. The Pacific Fleet and the Atlantic Fleet came later.

Q. Now, you say that Mr. Meyer made out requisitions sometimes, and at other times, when there was a rush, his assistants made them out? [241—191]

A. Yes, sir.

Q. And his assistants made out the requisitions and also placed on the estimate?

A. Well, I wouldn't state they did, no.

Q. You don't know whether they did or did not?

A. Whether they placed the estimate?

Q. Yes.

A. I have heard them ask Mr. Meyer to assist them in that course.

Q. Now, Officer Spear's office was not in the room in which you and Mr. Meyer and the other clerks had their office? A. No, sir; it was not.

Q. His was a little office separate and distinct and apart? A. Yes.

Q. And these papers, requisitions, and so forth, were taken or sent from the room in which they were prepared into Officer Spear's office? A. Yes, sir.

Q. That was the general custom?

A. That was the general custom.

Q. Now, during the spring and summer of 1908 there was a great deal of rush in the Storekeeper's Office, was there not? A. Yes, sir.

Q. It was a continual bustle and rustle in gather-

(Testimony of A. R. McNeil.)

ing together the supplies or requisitions for supplies anticipated that would be used by the respective fleets?     A. Yes, at that time.

Q. At that time. That is all. [242—192]

On redirect examination by Mr. RIDDELL, the witness testified as follows:

Q. Do you know whose handwriting that is (exhibiting paper to witness)?

A. It looks like Mr. Spaulding's initials there.

Q. Have you ever seen him write?     A. Yes.

Q. Can you pass an opinion upon it? I show you Plaintiff's Exhibit "5" and call your attention to the photographic copy of the first of requisition number 438, and call your attention to the writing here "Required to fill requisitions from the Atlantic Battleship Squadron." Did you ever see Mr. Meyer write?

A. Yes.

Q. And, in your opinion, whose handwriting is that?

A. Well, it looks—it is his, yes, I believe; that is, with the wide ink—

Mr. RIDDELL.—That is all.

On recross-examination by Mr. SCHLESINGER, the witness testified as follows:

Q. You were asked by counsel whether you were familiar with the methods of Mr. Spear and you said you were. As a matter of fact, he was a very attentive official, was he not, attentive to his duties?

A. In so far as I know.

Q. Yes. He wasn't a careless man, was he, so far as you know?



(Testimony of A. R. McNeil.)

A. Well, I don't know his personal habits.

Q. I am talking of his official habits. [243—193]

A. Well, I was never in direct communication with Paymaster Spear; I couldn't swear to the fact whether he was or not.

Q. And he was at his post of duty every day?

A. With the possible exceptions when he wanted to come down to Seattle on business.

Q. You never heard any complaints that Mr. Spear was an inattentive official, or careless official?

A. I was not in a position to hear those things.

Q. And had you ever noticed him making a hasty or imperfect examination of any papers?

A. Why, yes; I have taken papers in there that he signed.

Q. He would sign them? A. Yes, sir.

Q. Did he ever say he did not understand them?

A. Never said so, relied on the men under him to give him a square deal, I guess.

Q. And relied on what he knew of the transaction itself, did he? A. I couldn't say that.

Q. You had no discussion with Mr. Spear at all about the performance of his duties, did you?

A. No, sir; it was out of my—

Q. You were a subordinate there, were you not, Mr. McNeil, a subordinate officer? A. Yes, I was.

Q. To keep these books. These books that you say were kept partly by Mr. Meyer and partly by yourself were open to the examination of every clerk in the office, were they not?

A. Well, I didn't say those books were kept by

(Testimony of A. R. McNeil.)

Mr. Meyer. If you will look back in my testimony, I said I kept those books [244—194] and Mr. Meyer examined them when he wished to.

Q. Could they not have been examined by every single clerk there? A. Why, yes.

Q. That book wasn't kept by Mr. Meyer in his personal custody, was it? A. No, in mine.

Mr. SCHLESINGER.—That is all.

On further recross-examination by Mr. RIDDELL the witness testified as follows:

Q. Mr. McNeil, you said, in answer to Mr. Schlesinger's question, that you took papers to Mr. Spear to sign? A. Yes.

Q. Would he ever sign those papers without looking them over?

A. Why, I have seen him do so. I think he relied on my judgment, however.

Mr. RIDDELL.—That is all.

**[Testimony of J. A. Kettlewell, for Plaintiff.]**

J. A. KETTLEWELL, produced as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

On direct examination by Mr. RIDDELL, the witness testified as follows:

My name is J. A. Kettlewell. I am the person named as one of the defendants in this case. I was indicted along with these other defendants and pled guilty and served my sentence; since then I have received a pardon from the President, which enables me to testify in this case. I was Chief Clerk in the

(Testimony of J. A. Kettlewell.)

Navy Pay [245—195] Office at Seattle for a time; under Robert H. Orr, Paymaster, part of the time. I know the defendant Meyer.

Q. During any part of the year, 1907, Mr. Kettlewell, did you have any conversation with Mr. Meyer relative to purchases that had been made by the navy yard from Mr. Goldberg of the Great Western Smelting & Refining Company? A. Yes.

Mr. SCHLESINGER.—Now, your Honor, please, we object to any evidence as to any conversation or acts prior to the time set out in this indictment.

Mr. RIDDELL.—Your Honor, the Government contends that the testimony of conversations between Mr. Kettlewell and these other defendants here shall be limited as evidence as against only the particular defendant who has engaged in the conversation with him. I think that is prior to the time of the conspiracy, but the conversations with Mr. Kettlewell had with the defendants in this case are evidence against those men themselves, but I think the jury should be instructed that it should not be considered as evidence against any defendant except the one who was present in the conversation. I make the offer with that explanation.

Mr. SCHLESINGER.—I don't understand, if your Honor please, that a conversation had prior to the formation of the alleged conspiracy can properly be admitted in evidence.

The COURT.—Well, we haven't got to that point yet.



(Testimony of J. A. Kettlewell.)

Mr. SHIPLEY.—That is the question asked by counsel.

Mr. RIDDELL.—I intended to say to be made, not had been made.

Mr. SCHLESINGER.—Counsel has handed the gentlemen in the box certain documents, and they can't very well handle the [246—196] documents and listen to the testimony.

Mr. RIDDELL.—I submit, your Honor, the jurors are the best judges of that. They know what their duty is.

The COURT.—I think that while the testimony that is directly upon the issue, that the jurors' mind better be directed to the testimony that is being received than dividing the testimony between that and something else. I know that is the way I care to listen to it when I receive it. Proceed.

Mr. RIDDELL.—You say you did have such a conversation with the defendant Meyer?

A. Yes.

Q. Now, just tell the jury what those conversations were.

Mr. SCHLESINGER.—Now, your Honor please, we make the objection upon the ground heretofore enumerated, the ground it calls for a conversation antedating the alleged conspiracy set out in the indictment, and therefore is not binding, not a part of the *res gestae*.

Mr. RIDDELL.—Your Honor, this shows, just as the other collateral matter that we offered the other day, or other transactions, it shows the—

(Testimony of J. A. Kettlewell.)

The COURT.—If I want to hear from you I will tell you. Of course, the testimony can't all go in at once. I think that this objection is overruled.

Mr. SCHLESINGER.—Note an exception, your Honor.

Mr. RIDDELL.—Just state what those conversations were, Mr. Kettlewell, with relation to purchases from the Great Western Smelting & Refining Company, for which Mr. Goldberg was manager in the year 1907. Just tell the jury.

Mr. SCHLESINGER.—Your Honor please, we again reluctantly object on the ground the time is not fixed, nor persons [247—197] present, nor the place, and we are certainly entitled to have the time, place and persons.

The COURT.—Overruled.

Mr. SCHLESINGER.—Exception.

A. Mr. Meyer came—saw me frequently at the Navy Pay Office about the middle of the year 1907, or later, later in the year, and called attention to the fact that Mr. Goldberg, representing the Great Western Smelting & Refining Company,—

Mr. SCHLESINGER.—Please speak a little louder.

Mr. RIDDELL.—Speak louder, Mr. Kettlewell; the jurors can't hear you.

Q. (Continuing.) Mr. Meyer frequently came to the Navy Pay Office and told me that they were to make quite a number of requisitions for zinc plate, and that Goldberg would make it right if he got any business. Mr. Meyer frequently saw me in regard

(Testimony of J. A. Kettlewell.)

to that. I didn't see Mr. Goldberg at that time.

Q. Did Mr. Goldberg get any business?

A. He got quite a bit of business.

Mr. SCHLESINGER.—We object to that as immaterial, incompetent and irrelevant, and the records are the best evidence.

The COURT.—He may answer it.

Mr. SCHLESINGER.—Exception.

A. Mr. Goldberg was getting quite a bit of business.

Q. Then did you, from that time on until the fore part of January, 1908, had you seen Mr. Goldberg?

A. I seen Mr. Goldberg frequently; yes.

Q. I mean about the business that he was getting. A. Yes, I saw him.

Q. Well, you say Mr. Meyer said he would make it right with you. Until the fore part of January, 1908, had he made it [248—198] right with you?

A. No, he hadn't.

Q. Then what did you do?

A. I saw Mr. Meyer again, or rather he saw me, in the Navy Pay Office in December, I think it was, in 1907, and I called his attention to the fact that Goldberg had been getting a lot of business but nothing had been done about it. He says, "I will see Jimmie," as he referred to Goldberg, "and he will come over and see you about it and make it all right."

Q. Up until the fore part of January, 1908, then, had he seen you and made it all right with you?

A. No, he hadn't.

Q. Did you take any action at that time, then?



(Testimony of J. A. Kettlewell.)

A. What do you mean by—

Q. When Mr. Goldberg didn't come and see you and make it all right with you, did you take any action as a result of that?

A. I told Meyer about this, and along in January, I think it was January 11th, or probably a day or so previous to that, a voucher came through for an excessive amount of—for an over-delivery of zinc, and I turned it down.

Mr. RIDDELL.—I want to have folder, requisition 193, Series 1908, marked for identification as Plaintiff's Exhibit "17," folder and contents.

(Folder referred to marked Plaintiff's Exhibit "17" for identification.)

Q. Mr. Kettlewell, I show you folder and contents marked for identification Plaintiff's Exhibit "17." Do you know what those papers are?

A. Do I know what? [249—199]

Q. Do you know what those papers are?

A. Yes, sir.

Q. Are they the official records of the United States Pay Office at Seattle? A. No, sir.

Q. What are they?

A. This is evidently the navy yard folder.

Q. Navy yard folder for what?

A. For requisition number 193.

Mr. RIDDELL.—I made a mistake, your Honor. The other one was navy yard folder of requisition number 193, that is, "17," and I want marked for identification "18," the Navy Pay Office folder.

The COURT.—"18" is Navy Pay Office folder.

(Testimony of J. A. Kettlewell.)

Mr. RIDDELL.—“18” is Navy Pay Office folder for requisition number 193.

(Folder referred to marked Plaintiff’s Exhibit “18” for identification.)

Q. I show you folder and contents—

Mr. MORRIS.—That is Navy Pay Office folder for—

Mr. RIDDELL.—Requisition number 193 as Plaintiff’s Exhibit “18” for identification.

Q. I show you Plaintiff’s Exhibit “18” for identification and ask you if you know what that is?

A. Yes, sir.

Q. What is that, Mr. Kettlewell?

A. That is the Navy Pay Office folder covering requisition 193.

Mr. SCHLESINGER.—I understand these are not offered in evidence. [250—200]

Mr. RIDDELL.—Simply identified so far.

Q. In Plaintiff’s Exhibit “17,” Mr. Kettlewell, I call your attention to a paper dated January 11, 1908, and signed “Robert H. Orr, Paymaster,” and ask you if that is the letter to which you referred?

A. Yes, sir, that is the letter.

Q. Now, you say you turned it down. Just tell the jury what you did when you turned it down.

The COURT.—Let these be further marked.

Mr. RIDDELL.—All right. Just mark that letter, Mr. Clerk, plaintiff’s “17-A” for identification.

Mr. SCHLESINGER.—If your Honor please, without having to repeat the objection, may it be understood that our objection goes to all this testi-

(Testimony of J. A. Kettlewell.)

mony relating to transactions or acts prior to the first day of April, 1908, that being the earliest date, I believe, laid in the indictment, is it not, Mr. Allen?

Mr. RIDDELL.—Yes.

The COURT.—That is the stipulation or understanding?

Mr. RIDDELL.—I have no objection to your objection going to all those matters.

The COURT.—Let it so be understood.

Mr. RIDDELL.—When you say you turned that down, Mr. Kettlewell, when you turned that down, what did you do?

A. The voucher was received for a quantity greatly in excess of the amount of the requisition.

Q. Had it been passed at the navy yard?

A. The voucher had been passed at the navy yard and it came to the Navy Pay Office for payment.

Q. Now, that requisition called for what material?

A. That requisition calls for— [251—201]

Q. What kind of material? A. For zinc plate.

Q. What size? A.  $1\frac{1}{2}$  by 6 by 12 inches.

Q.  $1\frac{1}{2}$  by 6 by 12 inches?

Mr. MORRIS.—Let me ask, does that folder have reference to the particular zinc mentioned in the indictment?

Mr. RIDDELL.—No, that folder has reference to some 4933 pounds of zinc which Mr. Goldberg delivered over there in December or January.

Mr. MORRIS.—When?

Mr. RIDDELL.—In December or January prior.

Mr. SHIPLEY.—Prior to the indictment.



(Testimony of J. A. Kettlewell.)

Mr. RIDDELL.—Now, that requisition called for 1½ by 6 by 12 plate?

A. Yes, sir.

Q. For how many pounds?

A. The requisition called for 4,000 pounds.

Q. Called for 4,000 pounds. How many pounds were delivered?

A. The voucher showed that 59,033 pounds had been delivered.

Q. 59,033 pounds delivered. Now, what price did he get for it? A. Sixteen cents.

Q. Sixteen cents. Now, as I understand, you dictated this letter to Paymaster Orr?

A. I wrote the letter myself.

Q. You wrote the letter yourself. And then what did you do with it?

A. It was sent to the Commandant in the navy yard in the ordinary course of business. [252—202]

Q. Did you keep a copy of it in your files?

A. Yes, sir.

Mr. RIDDELL.—I therefore offer in evidence at this time, your Honor, Plaintiff's Exhibit "17," being navy yard folder for requisition number 193, Naval Supply Fund, and the contents: The contents being copy number 5 of that requisition, endorsement dated January 13, 1908; letter dated, "U. S. Navy Pay Office," dated—no, this is copy of letter dated U. S. Navy Office, January 11, 1908, to the Commandant; original calls number 1124 for inspection of supplies; an inspection report by the master machinist; a bill of the Great Western Smelting &

(Testimony of J. A. Kettlewell.)

Refining Company, dated December 13, 1907, for 59,033 pounds of zinc at sixteen cents; a card from the card index, requisition 193; an order for supplies dated December 12, 1907, accepting the proposal of the Great Western; call for inspection number 1358; receiver's report attached thereto; a letter dated January 11, 1908, signed Robert H. Orr, Paymaster, with endorsement thereon; a public bill number 506; a second public bill number 506; a third; a fourth public bill number 506; and the notice of rejected articles, dated Puget Sound, Washington, December 5, 1908, for 1933 pounds of  $\frac{1}{2}$  by 6 by 12 zinc plates, cause of rejection "In excess." In order to save time I make the offer of the other one at this time.

I also offer in evidence Navy Pay Office folder, being requisition number 193 and contents, consisting of second memorandum copy of requisition number 193; copy of letter dated January 11, 1908, to the Commandant of the navy yard; third memorandum copy of requisition number 193; proposal to the W. A. Corder Company; and the Great Western Smelting & Refining Company; a memorandum in blue pencil [253—203] attached thereto; one to the Seattle Hardware, proposal to the Seattle Hardware Company; proposal to Pacific Engineering Company; proposal to Pacific Metal Works; proposal to Western Iron & Metal Company; proposal to Schwabacher Hardware Company; an order for supplies accepting the bid of the Great Western Smelting & Refining Company, dated December 12, 1907, and stamp in red ink, "Robert H. Orr."

(Testimony of J. A. Kettlewell.)

Mr. MORRIS.—What is the number of the exhibit?

Mr. RIDDELL.—“18.”

The COURT.—Any objection to these offers?

Mr. KERR.—We are examining them, your Honor. We haven't had an opportunity to look at the contents of these folders. If your Honor will permit us to look them over we may not care to object, and we may want to preserve an objection of some kind.

The COURT.—Is there any further examination that can be made?

Mr. RIDDELL.—Now, when you sent your protest over to the navy yard against the acceptance of this excessive quantity of zinc because the price was excessive, what happened?

A. Another voucher was sent over for the 4,000 pounds called for by the requisition.

Q. Was that passed?      A. Yes, sir.

Mr. SCHLESINGER.—Mr. Riddell, do I understand you offer all of the enclosures in this folder?

Mr. RIDDELL.—Yes.

Mr. SHIPLEY.—Those you enumerated?

Mr. RIDDELL.—Yes, those I enumerated.

Mr. SCHLESINGER.—Your Honor please, we object to the [254—204] introduction in evidence of these papers, without enumerating each paper, bearing date December 20, 1907, and January 11, 1907, January 16th, 1907, and December 4, 1907, as well as the letter offered in evidence dated January 11, 1908, and the public bill bearing the same date, upon



(Testimony of J. A. Kettlewell.)

the ground that these transactions, which indeed are not claimed to be in anywise criminal or improper, are not included within this indictment, and are too remote in point of time; and upon the further ground they are no wise binding upon any one of these defendants. And we make, if your Honor please, the same objection—your Honor will allow me to state it now?

The COURT.—Yes.

Mr. SCHLESINGER.—To exhibit “18” for identification, and to those portions of the exhibit reading, “Memorandum copy 3, dated September 4, 1907; the proposal of the supplies to the W. A. Corder Company bearing same date; to the proposal of the Great Western Smelting Company bearing the same date; to the proposal of the Seattle Hardware Company bearing the same date; to the proposal of the Pacific Engineering Company bearing the same date; to the proposal of the Pacific Metal Works bearing the same date; to the Western Hardware & Metal Company bearing the same date; the Schwabacher Hardware Company bearing the same date; and also to a letter dated January 11, 1908, and to an order of supplies, December 12, 1907. We object to those documents upon the ground that we are not shown to have been in any wise connected with them, we didn’t authorize them to be made, and they are not included within the transactions embraced within this indictment, and for that purpose, and hence for those reasons, they are immaterial, incompetent and

(Testimony of J. A. Kettlewell.)

irrelevant, and are too remote in point of time.

[255—205]

The COURT.—The objection will be overruled. This will be admitted, of course, only for the instruction of the jury, and limited to this consideration, for the purpose of showing the relation between the parties; and the Court will further instruct the jury finally as to the consideration to be given to these documents in its deliberations.

Mr. SCHLESINGER.—Note an exception.

(Papers referred to as Plaintiff's Exhibits "17" and "18" for identification received in evidence and marked Plaintiff's Exhibits "17" and "18.")

Mr. RIDDELL.—(Reading letter written by Mr. Kettlewell relative to over-delivery of zinc plates.)

Q. You say, then, Mr. Kettlewell, that after that letter was written a new requisition was made for the 4,000 pounds and sent to your office, a new voucher was made for 4,000 pounds and sent to your office?     A. Yes.

Q. Was that voucher paid?     A. Yes.

Q. A check was issued therefor?     A. Yes.

Q. And delivered to the Great Western Smelting & Refining Company?     A. Yes.

Q. Now, Mr. Kettlewell, following that letter, after you sent that letter to the navy yard, did you see any of these defendants in relation to that matter?

A. Meyer called at the Navy Pay Office within a week, I should say within three or four days of that time.

(Testimony of J. A. Kettlewell.)

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The COURT.—Yes.

Mr. SCHLESINGER.—To exhibit “18” for identification, and to those portions of the exhibit reading, “Memorandum copy 3, dated September 4, 1907; the proposal of the supplies to the W. A. Corder Company bearing same date; to the proposal of the Great Western Smelting Company bearing the same date; to the proposal of the Seattle Hardware Company bearing the same date; to the proposal of the Pacific Engineering Company bearing the same date; to the proposal of the Pacific Metal Works bearing the same date; to the Western Hardware & Metal Company bearing the same date; the Schwabacher Hardware Company bearing the same date; and also to a letter dated January 11, 1908, and to an order of supplies, December 12, 1907. We object to those documents upon the ground that we are not shown to have been in any wise connected with them, we didn’t authorize them to be made, and they are not included within the transactions embraced within this indictment, and for that purpose, and hence for those reasons, they are immaterial, incompetent and



(Testimony of J. A. Kettlewell.)

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Mr. SCHLESINGER.—Note an exception.

(Papers referred to as Plaintiff's Exhibits "17" and "18" for identification received in evidence and marked Plaintiff's Exhibits "17" and "18.")

Mr. RIDDELL.—(Reading letter written by Mr. Kettlewell relative to over-delivery of zinc plates.)

Q. You say, then, Mr. Kettlewell, that after that letter was written a new requisition was made for the 4,000 pounds and sent to your office, a new voucher was made for 4,000 pounds and sent to your office?     A. Yes.

Q. Was that voucher paid?     A. Yes.

Q. A check was issued therefor?     A. Yes.

Q. And delivered to the Great Western Smelting & Refining Company?     A. Yes.

Q. Now, Mr. Kettlewell, following that letter, after you sent that letter to the navy yard, did you see any of these defendants in relation to that matter?

A. Meyer called at the Navy Pay Office within a week, I should say within three or four days of that time.

(Testimony of J. A. Kettlewell.)

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The COURT.—Yes.

Mr. SCHLESINGER.—To exhibit “18” for identification, and to those portions of the exhibit reading, “Memorandum copy 3, dated September 4, 1907; the proposal of the supplies to the W. A. Corder Company bearing same date; to the proposal of the Great Western Smelting Company bearing the same date; to the proposal of the Seattle Hardware Company bearing the same date; to the proposal of the Pacific Engineering Company bearing the same date; to the proposal of the Pacific Metal Works bearing the same date; to the Western Hardware & Metal Company bearing the same date; the Schwabacher Hardware Company bearing the same date; and also to a letter dated January 11, 1908, and to an order of supplies, December 12, 1907. We object to those documents upon the ground that we are not shown to have been in any wise connected with them, we didn’t authorize them to be made, and they are not included within the transactions embraced within this indictment, and for that purpose, and hence for those reasons, they are immaterial, incompetent and

(Testimony of J. A. Kettlewell.)

irrelevant, and are too remote in point of time.

[255—205]

The COURT.—The objection will be overruled. This will be admitted, of course, only for the instruction of the jury, and limited to this consideration, for the purpose of showing the relation between the parties; and the Court will further instruct the jury finally as to the consideration to be given to these documents in its deliberations.

Mr. SCHLESINGER.—Note an exception.

(Papers referred to as Plaintiff's Exhibits "17" and "18" for identification received in evidence and marked Plaintiff's Exhibits "17" and "18.")

Mr. RIDDELL.—(Reading letter written by Mr. Kettlewell relative to over-delivery of zinc plates.)

Q. You say, then, Mr. Kettlewell, that after that letter was written a new requisition was made for the 4,000 pounds and sent to your office, a new voucher was made for 4,000 pounds and sent to your office?     A. Yes.

Q. Was that voucher paid?     A. Yes.

Q. A check was issued therefor?     A. Yes.

Q. And delivered to the Great Western Smelting & Refining Company?     A. Yes.

Q. Now, Mr. Kettlewell, following that letter, after you sent that letter to the navy yard, did you see any of these defendants in relation to that matter?

A. Meyer called at the Navy Pay Office within a week, I should say within three or four days of that time.



(Testimony of J. A. Kettlewell.)

Q. All right, tell the jury what happened there.  
[256—206]

A. Mr. Meyer protested against making the matter official and said I should have taken that matter up with him and that it could have been straightened out, wanted to know what I wrote it for. I told him that Goldberg hadn't done as Meyer said he was doing, and thought that would be a good chance to call his attention to it. Well, he says, "I will see Goldberg and he will fix it all right, I will have him come over and see you."

Q. And did Mr. Goldberg come and see you?

A. Mr. Goldberg came into the office within a short time after that, about three or four days afterwards, I should judge.

Q. And what happened there?

A. He made no reference to this particular requisition, but he called me out in the hall and handed me a hundred dollars.

Q. Did you have any conversation with him at that time?     A. Yes.

Q. What was said?

A. He says, "This will straighten up all those old matters, and there is a big requisition coming through, Meyer is going to make a big requisition as soon as he can," and, he says, "I want everything straightened up before that comes through."

Q. Did he say anything about any compensation to you?

A. Yes, he told me that he would divide the profits on the basis of twenty per cent.

(Testimony of J. A. Kettlewell.)

Q. Make an arrangement to divide the profits on the basis of—

A. Twenty per cent to Meyer and twenty per cent to me.

Q. Twenty per cent to Meyer and twenty per cent to you. Goldberg told you that? [257—207]

A. Goldberg told me that; yes.

Q. Where was that?

A. In the hallway of the Walker Building, where the Navy Pay Office was situated.

Q. That was right down here within two blocks?

A. Down on University and Second Avenue.

Mr. SCHLESINGER.—You haven't fixed the time.

Mr. RIDDELL.—I think so.

J. A. KETTLEWELL, a witness on behalf of the plaintiff, on the stand—continued direct examination.

(By Mr. RIDDELL.)

Q. Mr. Kettlewell, you said yesterday when the voucher for the 1,933 pounds came in it was rejected and a new voucher was made out for the 4,000 pounds. That was paid by check, was it?

A. Yes, sir.

Q. Now, Mr. Kettlewell, did any requisition ever come through for the 1,933 pounds?

A. Yes, a subsequent requisition was made to cover that at the navy yard.

Q. I will have this marked as Plaintiff's Exhibit for Identification "19."

(Same marked Plaintiff's Exhibit "19" for Identification.)

(Testimony of J. A. Kettlewell.)

Q. I show you a folder and contents, which has been marked for identification, Plaintiff's Exhibit "19." Do you know what they are, Mr. Kettlewell?

A. Yes, sir. [258—208]

Q. What are they?

A. This is the Navy Pay Office copy of requisition 359 and all of the papers pertaining to it.

Q. For what, Mr. Kettlewell?

A. For 1,933 pounds of zinc, boiler, 1½ by 6 by 12.

Q. It is an official record in the office of the United States Navy Pay Office here? A. Yes, sir.

Q. And was made under your official direction as Chief Clerk?

A. Yes, made under my direction. No, this was received from the navy yard.

Q. What are the rest of the contents of the folder? The record was made under your direction as Chief Clerk? A. Yes, the rest of it was, yes.

Q. And that is a part of the official records of the United States Navy Pay Office, is it? A. Yes, sir.

Mr. RIDDELL.—We offer that in evidence.

Mr. SCHLESINGER.—I understand you offer the entire folder, Mr. Riddell?

Mr. RIDDELL.—Yes, the entire folder.

Mr. SCHLESINGER.—If your Honor please, we simply object as to the introduction of these papers upon the same grounds urged with respect to the other exhibits admitted yesterday afternoon.

The COURT.—Yes, same ruling.

Mr. SCHLESINGER.—Without having to repeat the objection.



(Testimony of J. A. Kettlewell.)

The COURT.—Yes, and the same ruling. Not an exception.

Mr. SCHLESINGER.—Mr. Riddell, do you know whether or not [259—209] this folder is complete and contains all of the correspondence?

Mr. RIDDELL.—I assume that it does.

Q. Mr. Kettlewell, do you know whether this folder, whether there is anything missing from it?

A. I didn't examine it; I don't know.

Q. All right.

(Exhibiting folder to witness.)

Mr. MORRIS.—Wouldn't it be better for him to examine it first?

Mr. RIDDELL.—That is what I am having him do.

Q. Is it complete?

A. Why, apparently. There may have been other papers that I have no recollection of.

Mr. MORRIS.—What is the answer?

A. Apparently complete.

Mr. ALLEN.—Apparently, There may have been other papers you are not familiar with.

Mr. SCHLESINGER.—I think, if your Honor please, we ought to have them all.

Mr. RIDDELL.—Do you know of any other papers that belong in there, Mr. Kettlewell?

A. I don't know of any others that should be there, no.

Mr. RIDDELL.—We offer that in evidence as Plaintiff's Exhibit "19."

The COURT.—Same ruling. You will read it to

(Testimony of J. A. Kettlewell.)

the jury now. Exception allowed.

Mr. RIDDELL.—Yes, your Honor. I will just read this one copy of the requisition, Naval Supply Fund, for stock, 1,933 pounds.

(Reading same to jury.) [260—210]

(Folder and contents referred to received in evidence and marked Plaintiff's Exhibit "19.")

Q. When that requisition reached your office over here, Mr. Kettlewell, what did you do?

A. Called for bids in the ordinary way.

Q. Who originated this requisition?

A. It originated in the General Storekeeper's office at the navy yard.

Q. When the requisition came over you had those bids prepared, sent out those bids? A. Yes, these bids—

Q. To what companies?

A. Sent to the Great Western Smelting & Refining Company, W. A. Corder Company, American Iron & Metal Company, and Hambach & Company.

Q. Do you know who the American Iron & Metal Company was?

A. I know there was such a concern. I don't know anything about the personnel of the concern.

Q. Do you know who owned the concern, the American Iron & Metal Company?

Mr. SCHLESINGER.—We object as calling for an opinion of the witness and calling for his conclusion. How in the world would he be able to say who owned a certain concern?

The COURT.—I don't know whether it is a part-

(Testimony of J. A. Kettlewell.)

nership or corporation. If he knows he can tell, of his own personal knowledge.

Exception allowed.

Mr. RIDDELL.—Do you have any personal knowledge as to who owns it?

A. No, sir, I have no knowledge at all. [261—211]

Q. Did you ever hear any of the defendants say who owned it?

Mr. SCHLESINGER.—We object to that, if your Honor please, on the ground it would be purely hearsay.

The COURT.—If he heard the defendants say he may answer.

Mr. SCHLESINGER.—And another objection is, he should specify the particular defendant, the time, place and circumstance.

The COURT.—Overruled. If he knows.

Mr. SCHLESINGER.—Exception.

Mr. RIDDELL.—Did you ever hear any of these defendants say who owned that concern?

A. No, I can't say that I have.

Q. Now, that folder is in evidence, Mr. Kettlewell, and it shows the American Iron & Metal Company, by J. D. Rubenstein. Do you know what office Mr. Rubenstein had in that concern?

Mr. SCHLESINGER.—We object as not being proper direct examination, and not being binding upon the defendant, and not the best evidence.

The COURT.—He may answer if he knows what



(Testimony of J. A. Kettlewell.)

connection Rubenstein had with it. Exception allowed.

Mr. SCHLESINGER.—That means of his personal knowledge and not mere hearsay.

The COURT.—Yes, if he knows personally.

A. All that I know is that J. D. Rubenstein signed the bid.

Mr. RIDDELL.—You have seen Mr. Rubenstein's signature, have you?

A. I have seen the signature, J. D. Rubenstein, on these bids, is all I know about it.

Q. When these bids came in from the American Iron & Metal [262—212] Company, did they always bear the signature of J. D. Rubenstein?

Mr. SCHLESINGER.—I object on the ground the bids speak for themselves.

A. I couldn't say.

Mr. RIDDELL.—All right.

Q. Was this material awarded, this 1,933 pounds of zinc on this requisition were awarded, were they?

A. Yes, sir.

Q. To whom?

A. Awarded—well, the records show there. I will have to see that. The Great Western Smelting and Refining Company.

Q. Mr. Kettlewell, do you know what business the American Iron & Metal Company was in, what business they did?

A. Why, they were in the iron and metal and junk business, I believe.

Q. Did they carry any stock, do you know whether

(Testimony of J. A. Kettlewell.)

they carried any stock?      A. I don't know.

Mr. SCHLESINGER.—We object to calling for a conclusion of the witness. He said he didn't know, I understand.

Mr. RIDDELL.—I asked him if he did.

Mr. SCHLESINGER.—What do you mean by stock?

The COURT.—Proceed. Exception allowed.

Mr. RIDDELL.—Do you know whether they carried any material in stock down there such as zinc called for?

Mr. SCHLESINGER.—We object to that as immaterial, incompetent and irrelevant and not calling for the personal knowledge of the witness. [263—213]

The COURT.—It calls for his personal knowledge if he knows. Exception allowed.

A. I never was at their place of business; I don't know what they carried or anything more than their designation in the city directory as far as their business is concerned.

Mr. RIDDELL.—Now, I show you a paper marked for identification, Plaintiff's Exhibit "20." Do you know what that is?

A. This is apparently the navy yard copy of requisition 359.

Q. That is an official record at the navy yard office?      A. Yes, apparently.

The COURT.—Has that been marked?

Mr. RIDDELL.—Yes, your Honor, Plaintiff's Exhibit "20" for identification. I offer Plaintiff's

(Testimony of J. A. Kettlewell.)

Exhibit "20" in evidence, the folder and contents.

Mr. ALLEN.—That, your Honor, to be coupled up with the explanation of Mr. House that it was taken from the navy office by him.

The COURT.—That is No. 359?

Mr. SCHLESINGER.—Will your Honor let me ask the witness one question?

The COURT.—Yes.

Mr. SCHLESINGER.—Does that folder as it comes to you now, contain all of the contents that it ever had contained?

A. That is not a folder that I have had access to. It is the first time I have seen it.

Mr. SCHLESINGER.—Do you know what were the original contents of this particular folder?

A. No, sir. [264—214]

Mr. SCHLESINGER.—Do you know what has been removed from the folder?

A. I don't know anything about the folder; I never saw it before.

Mr. SCHLESINGER.—If your Honor please, making the objections heretofore made to other exhibits, not only we object—

The COURT.—The same objection is made as heretofore?

Mr. SCHLESINGER.—Yes, sir.

The COURT.—Overruled and let it be admitted.

Note an exception.

(Folder and contents referred to, received in evidence and marked Plaintiff's Exhibit "20.")

Mr. RIDDELL.—This one contains that other



(Testimony of J. A. Kettlewell.)

requisition that was read to you before from the Navy Pay Office, contains a call for inspection, a bill of the Great Western, for material, with a copy of requisition and this letter dated March 14, 1908.

(Reading same to jury.)

Mr. SPIRK.—Whose signature is there?

Mr. RIDDELL.—E. E. Rogers, Paymaster General, U. S. N.

Q. Now, this requisition for this 1,933 pounds, Mr. Kettlewell, corresponds how with the amount rejected after the former requisition for 4,000 pounds?

A. This latter requisition covers the excess quantity over the 4,000 pounds.

Q. The amounts are identical?      A. Yes.

Q. Now, when we closed yesterday afternoon you had told the jury about an incident that occurred between you and Mr. Goldberg at the Navy Pay Office when it was located [265—215] down here in the Walker Building. After Mr. Goldberg paid you that hundred dollars—at the time he paid you that hundred dollars did he say anything about any future requisitions?

A. He said that a requisition for a large amount was coming through soon, just as soon as Meyer could get it through.

Q. Then what was the next that occurred with relation to that requisition, that you had anything to do with? Whom did you see next? Did you see Mr. Meyer again?

A. I saw Mr. Meyer—Mr. Meyer saw me, rather; I never went to see him. He saw me in regard to it.

(Testimony of J. A. Kettlewell.)

Q. Where? A. In the Navy Pay Office.

Q. Now, when was that?

A. It was within a week, or was after I was talking to Mr. Goldberg.

Q. And what did Mr. Meyer say at that time?

A. He wanted to know if Goldberg had straightened up matters with me so that he could put this requisition through, and I said that he had. He said, "I will get it through just as soon as I can." He says, "I don't know just when; I will hold it as long as I can and will get it through soon. I will make the requisition for 50,000 pounds of zinc."

Q. Then what was done?

A. Well, a requisition did come through.

Q. I show you Plaintiff's Exhibits "4," "5," "6" and "7," which have been introduced in evidence, and ask you whether or not they relate to the requisitions about which Mr. Meyer and Mr. Goldberg talked to you? A. Yes. [266—216]

Mr. SCHLESINGER.—I think that is leading, Riddell. I submit, your Honor please, in the examination of this kind of a witness he ought to avoid leading questions.

Mr. RIDDELL.—I shall endeavor to do so.

Q. Do you know whether you ever had any talk with any of these defendants about that requisition?

A. Yes.

Q. Well, what requisition is that, Mr. Kettlewell?

A. This is requisition 438, Navy Yard, Puget Sound, requisition No. 438.

Q. For what?

(Testimony of J. A. Kettlewell.)

A. For 50,000 pounds zinc,  $\frac{1}{2}$  by 6 by 12.

Q. Now, Mr. Kettlewell, just briefly, in order that we may get it clear in our minds, when you were appointed to the Navy Pay Office in Seattle Mr. Meyer was appointed as Chief Clerk over there and took your place? A. I understand so; yes.

Q. And you are familiar with the procedure over there?

A. Familiar with the procedure at that time, yes.

Q. At that time, that is what I mean. Now, when these requisitions were made out, how many were made?

A. Why, six copies were made, an original and five copies.

Q. How were they made in the machine, all at the same time?

A. Why, the original is usually made first. The form was a little different at the bottom.

Q. And then the five copies were made?

A. Yes, usually.

Q. Now, when that requisition was made, when those requisitions, the original and five copies, were made, did you get any of [267—217] them?

A. One copy was sent to the Navy Pay Office at Seattle at the time they were made.

Q. And what was done with the rest of them?

A. The rest of them were sent to the Bureau, the Paymaster General's office at Washington.

Q. Were any retained in the navy yard?

A. The storekeeper usually—always retained a copy, yes.



(Testimony of J. A. Kettlewell.)

Q. The storekeeper always retained a copy. Did any of those copies, then, that went to Washington ever come back to you?

A. Yes, the original and one copy came back to the Navy Pay Office.

Q. And the original and the one copy of this requisition 438 are now in the Navy Pay Office folder here? Just examine it and see (exhibiting folder to witness).

A. The second copy is in the folder. The original is, with the voucher, in the Treasury Department, I presume.

Q. All right. Now, just tell the jury, Mr. Kettlewell, when this first copy of the requisition came to you from the navy yard, just tell the jury now what the procedure was in your office.

A. When the copy was received from the navy yard it was placed in this folder, and nothing was done until the requisition was formally approved by the Bureau, by the Paymaster General.

Q. Now, how did it reach you that the requisition had been approved, how did notifications reach you that the requisition had been approved?

A. Usually the requisitions were approved by telegraph to the Commandant, and he notified us by phone, and subsequently [268—218] the original and the copy was returned, and that was our authority for making a purchase.

Q. All right. Then, when you received that telegraphic information from Washington, then what happened?

(Testimony of J. A. Kettlewell.)

A. Then we immediately proceeded to send out proposals to various dealers calling for bids to be opened at a certain time.

Q. Then what happened?

A. And after the bids were opened on a certain day at noon, the award was made to the low bidder, unless there was some—if the bills were all straight, apparently all right, the award was made to the low bidder.

Q. Now, who determined the dates on which the award should be made, the date on which it should be opened, when you were in that office?

A. Why, usually the clerk that made out these requisitions. We had the usual form of procedure. Leave a few days, sufficient time to get these bids out and have them returned.

Q. Did you have anything to do with fixing that date? A. Why, I could have in some instances.

Q. Do you know whether you did in this instance?

A. In this instance I think I did.

Q. Now, the award, the dates on which the bids were to be opened, was placed on the proposal, was it? A. Yes, sir.

Q. And then they were returned how?

A. Well, they were returned either by mail, through the mails, or they were sometimes brought up personally by the bidders and placed in a box that was on the railing. [269—219]

Q. In what form were they brought you?

A. They were always in a sealed envelope. We

(Testimony of J. A. Kettlewell.)

furnished a return envelope with the date on the corner.

Q. With the date on the corper, and that date was what?     A. The date of opening.

Q. The date of opening on the corner. Then, after the proposals were opened, the award was made to the low bidder. Then what happened in your office?

A. Then a formal order was written up and mailed to the low bidder, and a copy sent to the storekeeper and a copy filed in our folder in the navy pay office.

Q. Then what was done in your office, what next?

A. Then nothing was done until the voucher was received in payment for the material, and then the voucher would be checked with our records as to the unit price and its tensions, see it was properly filled in, and then payment was made.

Q. Who would do that checking over in your office?

A. Why, Mr. Hayney, a clerk there, usually did that.

Q. Was Mr. Meyer familiar with the procedure of your office?

A. I couldn't say as to that; I presume so.

Mr. MORRIS.—We move to strike out the answer.

Mr. RIDDELL.—Yes.

Q. When the voucher came back from the navy yard what was done then, after it was checked over?

A. After it was checked over, a check was issued in payment therefor, and a copy of the voucher sent with the check to the dealer. A copy of the voucher



(Testimony of J. A. Kettlewell.)

was also sent with the daily reports to the Paymaster General. [270—220]

Q. That was for what purpose, that daily report was sent to the Paymaster General for what purpose?

A. That was for the purpose of keeping account of the local deposit to the credit of the purchasing pay officer.

Q. It was the custom to reimburse his account as these payments were made, to keep a certain balance there all the time and those reimbursements were made under the direction of what officer in Washington?

A. The Bureau of Supplies and Accounts, Paymaster General's office.

Q. Paymaster General's office. And the Paymaster General was notified daily of the amounts of various checks that had been issued against that fund so he could be prepared to repeat it again?

A. Yes, sir.

Q. After the check was issued and these copies of the vouchers were sent out, then what was done?

A. The original voucher was retained in the Paymaster's files until the quarterly statement was prepared, and then they were forwarded to the Treasury Department.

Q. Well, now, after the check was issued, did the check ever return to your office, after the banks cashed the check, did it ever return to your office?

A. No.

Q. Where did it go?

A. Why, I couldn't say, but I presume that it went

(Testimony of J. A. Kettlewell.)

to the Treasury Department.

Q. And you sent your vouchers in, then, to the Treasury Department quarterly?

A. Yes, sir. [271—221]

Q. Now, Mr. Kettlewell, at the time that this requisition for 50,000 pounds of  $1\frac{1}{2}$  by 6 by 12 zinc came into your office was there that amount of zinc in the city of Seattle?

The COURT.—If he knows he may tell.

Mr. SCHLESINGER.—If he knows of his own personal knowledge by inspection.

The COURT.—Yes.

Mr. RIDDELL.—Well, not necessarily by inspection; if he has any personal knowledge.

Mr. SCHLESINGER.—It must be a direct personal knowledge, not a knowledge from hearsay.

The COURT.—No, I wouldn't say that. If he can testify from any reasonable inquiry of a man in that position, or a person who has been advised, he can tell, but he should give the knowledge on the basis as conclusive.

Mr. RIDDELL.—You understand that refers, Mr. Kettlewell, to  $1\frac{1}{2}$  by 6 by 12 zincs called for in that requisition.

A. What was the requisition?

Mr. SCHLESINGER.—As I understand your Honor's ruling, he cannot answer that by a direct way, but he may show what inquiries he made.

The COURT.—This is my idea: I think if he was advised he could testify, but he should tell the jury the basis on which he bases his conclusion, or facts

(Testimony of J. A. Kettlewell.)

upon which he bases his conclusion.

Mr. RIDDELL.—Did you, or were you in the possession of any facts at that time that enabled you to know, on reasonable inquiry, as to whether or not there was 50,000 pounds of  $1\frac{1}{2}$  by 6 by 12 zincs in the city of Seattle at that time?

Mr. SCHLESINGER.—We object to that upon the same ground, if [272—222] your Honor please. He has the right to follow your Honor's ruling.

The COURT.—He can answer this by yes or no and then he can state—I assume this is preliminary. Exception.

A. From my knowledge I had no information as to the quantity of zinc in town.

Mr. RIDDELL.—You had no information from your knowledge?

A. You say at the time this requisition was received?

Q. Yes.

A. No, not up to that time I had no knowledge of the quantity of the zinc in town, no, sir.

Mr. RIDDELL.—Did Mr. Goldberg ever tell you whether or not there was that amount of zinc in town?

Mr. SCHLESINGER.—That is decidedly leading, however—

Mr. RIDDELL.—I tried to put it so it wouldn't be.

The COURT.—Proceed.

A. No, Mr. Goldberg never discussed that with me at all, about what stock he carried, or how much stock was in town, never talked of in that way.

Q. Now, when this requisition came through—be-



(Testimony of J. A. Kettlewell.)

fore this requisition came through, do you know whether Mr. Goldberg knew it was coming?

Mr. SCHLESINGER.—One moment. That is objectionable upon the ground it is calling for his opinion as to what Mr. Goldberg might or might not have known.

The COURT.—Yes, let him state if Mr. Goldberg said anything.

Mr. RIDDELL.—Before this requisition came through, did Mr. Goldberg say anything to you about it?

A. I believe I said when he paid me that \$100 he told me this [273—223] requisition was coming through.

Q. Did he say anything to you about the requisition at any other time after that and before the requisition was received by you?

A. He referred to a requisition for a large quantity that was coming through; didn't refer to it by number or anything of that kind. He said that a requisition for a large quantity was coming through.

Q. Now, when a requisition was received by you what did you do?

A. You mean the regular procedure that was gone through?

Q. No, what did you do in this particular instance with this particular requisition?

A. Well, when we got this requisition I phoned Mr. Goldberg and told him it was there.

Q. Had he made any other inquiry about it?

A. Oh, several times. And we agreed to hold the

(Testimony of J. A. Kettlewell.)

requisition a couple of days before sending it out, and that was done, and I had the proposals made out then.

Q. Now, Mr. Kettlewell, what was the regular course of procedure in your office when proposals were made out, how did they reach the dealers, in the ordinary course?

A. Mr. Johnson, a clerk in charge of that particular section, mailed them to the dealers.

Q. In this particular instance what was done?

A. The proposal to Corder & Company was mailed direct, and several others—some of them I took around to the dealers myself, and some I handed to Mr. Goldberg.

Q. I show you these proposals dated April 11, 1908, from navy pay office, Copy of Requisition 438, being Plaintiff's [274—224] Exhibit "7." The first one is headed to the Fowler Metal Company. Tell the jury the history of that particular proposal.

A. Well, what do you want me—how far back do you want me to go?

Q. Well, as preliminary to that, I will ask the Court to instruct the jury—the Court takes judicial notice that the banks—or first, I will call your attention to this notation on the cover of Plaintiff's Exhibit "7," "del. 4/9/08." Tell the jury what that means.

A. That is the date of the telegraphic approval from the Paymaster General's Office.

Q. And when that telegraphic approval was received then you had authority to do what?

(Testimony of J. A. Kettlewell.)

A. We had authority to make the purchase.

Q. I ask the Court to take judicial notice that the night of April 9, 1908, was on Thursday, that the 11th of April, 1908, was on Saturday, and that the 15th of April, 1908, was the following Wednesday.

Mr. RIDDELL.—Now, when those proposals came in, did Mr. Goldberg say anything to you about any of the proposals, did Mr. Goldberg say anything to you about sending out any additional proposals?

A. When the proposals came in—I don't understand just what you mean by that, when the—

Q. When the requisition came in, and after you had sent out the proposals, did Mr. Goldberg ever request any additional proposal to be sent out?

A. I can't answer that yes or no without—

Q. Well, just tell what he did after the proposal went out [275—225] in regard to the Fowler Metal Company bid.

A. After the proposals went out nothing was done. Anything that was done was before the proposals went out.

Q. All right.

A. That is, you want me to tell what happened? I can tell you that.

Q. All right; tell what happened.

A. The requisition was received—or the approval was received on the 9th of April and the proposals were held until the 11th of April. In the meantime, as soon as the requisition was approved, I telephoned Mr. Goldberg and he came to the office and said, "I want to get an extra set of those proposals," he says,



(Testimony of J. A. Kettlewell.)

“I have got another party that I want to bid on this.” He says, “I don’t propose to split up the profits with half a dozen people. I want to get another bidder on this.” I says, “Who will it be?” He says, “I don’t know yet; I will let you know.” I says, “Whoever it is, don’t let them know I know anything about it; have them come up here and get the proposal in the regular way.” And a gentleman did come into the office and get the proposal. He looked over the bulletin board, where we have a copy of this posted, and he says, “I represent the Fowler Metal Company and I would like to get a set of proposals to submit a bid on this zinc,” and I says, “All right,” and I gave him two copies. I didn’t know who he was. And I also gave Mr. Goldberg an extra set of proposals.

Mr. SCHLESINGER.—An extra set?

A. Yes. And I took the other proposals, as P. McManus—W. A. Corder was mailed direct. I took out the proposals of P. McManus, Pacific Engineering Company, Schwabacker Hardware Company, Union Sound Machinery Depot, Seattle Hardware [276—226] Company, Hallidie Machinery Company, I took those out personally to the dealers and made inquiries as to whether or not they had this material.

Q. What did you find?

A. I called particular attention to the fact that we had to have this right away, five days. They, of course, couldn’t furnish it within that time.

Mr. ALLEN.—You say they, of course, couldn’t

(Testimony of J. A. Kettlewell.)

furnish it within that time?

A. They couldn't furnish it within that time. So I says, "Just state that on the proposal and mail it to us."

Q. Now, Mr. Kettlewell, do you recognize the gentleman who came up to your office after Mr. Goldberg told you he was going to have somebody else bid on that? A. Yes, sir, I have since.

Q. Can you point him out now?

A. It is Mr. Silverstone, I believe.

Q. This gentleman sitting here (showing)?

A. Yes. I didn't know his name at that time; I had never seen the gentleman before at all.

Q. Now, these bids that you have in your hand, Mr. Kettlewell, are all the bids that were sent out at that time?

A. I am pretty certain that they are; yes, sir.

Q. Now, the first bid is to the Fowler Metal Company? A. Fowler Metal Company.

Q. And that was put in by Mr. Silverstone sitting here? A. Yes, sir.

Q. The next bid? A. That is the same.

Q. The next bid was to whom?

A. The Great Western Smelting & Refining Company.

Q. Signed by whom? [277—227]

A. Signed, Great Western Smelting & Refining Company, per Emar Goldberg.

Q. Emar Goldberg is one of the defendants in this case? A. Yes, sir.

Mr. ALLEN.—What is the dates of all these now?

(Testimony of J. A. Kettlewell.)

Mr. RIDDELL.—These are all dated what dates, Mr. Kettlewell?

A. Dated April 11, opening April 13, 1908.

Q. You got the Fowler Metal Company and the Great Western. What is the next bid?

A. American Iron & Metal Company.

Q. Do you know who submitted that bid, do you know how that bid got into the office?

A. No, sir. In the regular way—

Q. Do you know why that bid was sent out?

A. Why, I was requested to send one to the American Iron & Metal Company.

Q. By whom, if you remember?

A. Mr. Goldberg asked me to send one to them.

Q. Now, next is the bid of P. McManus. You say you took that bid to Mr. McManus? A. Yes, sir.

Q. How did Mr. McManus come to bid \$12.60 a hundred pounds, do you know?

A. Well, he said he couldn't handle this at all, and I told him that he might as well put in a bid, he could get it for about \$12.60 and make a profit on it if he happened to get it.

Q. If he happened to get it. The bid of the W. A. Corder Company, you say, was mailed to that concern? A. Yes, sir, mailed to Corder.

Q. The next one is to whom? [278—228]

A. Pacific Engineering Company.

Q. And did they bid?

A. They bid fourteen cents.

Q. Do you know at whose suggestion?

A. Why, I took this to Mr. Stork, representing



(Testimony of J. A. Kettlewell.)

the Pacific Engineering Company, and asked him to bid on it, and he did.

Q. Who suggested the price, do you recall?

A. Why, I suggested the price to him.

Q. Who is the next bid?

A. Schwabacher Hardware Company.

Q. Did they bid?

A. "Unable to supply" they say.

Q. You took that to them personally? A. Yes.

Q. And the next one?

A. The next one is Puget Sound Machinery Depot.

Q. How did that bid reach them?

A. There is no bid; they are unable to supply.

Q. How did that bid reach them, do you know?

A. I took that down to Mr. Garrett and had him make that statement on it.

Q. Who is the next bid?

A. The Seattle Hardware Company.

Q. How did that bid reach them?

A. I took that bid down to Mr. Johnson of the Seattle Hardware, and he told me he couldn't furnish it within the short time, and I told him to state that on the bid.

Q. Was there any other bids?

A. Halladie Machinery Company, "No bid."

Q. How did that bid reach them? [279—229]

A. I am not positive about this, whether this was mailed direct to them or whether I took it down. I knew they wouldn't furnish it because it wasn't in their line.

Q. Mr. Kettlewell, were you a relative of any of

(Testimony of J. A. Kettlewell.)

the persons to whom those proposals were sent?

A. Why, Mr. McManus is a distant relative of mine.

Q. After those proposals were sent out, Mr. Kettlewell, do you know how the Fowler Metal Company's proposal reached the office again?

A. You mean when it was brought in, the bid?

Q. After the proposal was sent out, how did it come back from the office?

A. Mr. Silverstone brought it in.

Q. Mr. Silverstone brought it back up there? Now, what are the prices that are bid on there by the different bidders, Mr. Kettlewell?

A. Fowler Metal Company—

Q. That was Mr. Silverstone's bid?      A. Yes.

Q. And they were the successful bidder?

A. Yes, sir.

Q. Now, they bid what?

A. \$12.45 per hundred pounds.

Q. And the next?

A. The next one is Great Western Smelting & Refining Company.

Q. How much?

A. Twelve and a half cents per pound; the American Iron & Metal Company, twelve and three-quarter cents per pound; P. McManus, ten days delivery, \$12.60 per hundred pounds; thirty days delivery, \$12.55 per hundred pounds; W. A. Corder, [280—230] 12.6 cents per pound; Pacific Engineering Company, fourteen cents per pound. That is all.

Q. And those are all the bids?      A. Those are all.

(Testimony of J. A. Kettlewell.)

Q. So that of those bids, outside of Corder's and Silverstone's and Goldberg's bids, the only other bids were put in at your suggestion? A. Yes, sir.

Q. The Pacific Engineering Company's bid was for how many pounds?

A. Well, 5,000 pounds is written in here very faintly. I presume he meant to bid on five thousand pounds.

Q. And all the rest of them bid on 50,000, the whole amount? A. Yes.

Q. Now, when did Mr. Silverstone bring back that bid?

A. Why, he brought in the bid about the time of opening, about noon.

Q. When the bids were opened, who all were there, if you remember?

A. Mr. Silverstone was there, I am positive, and Mr. Goldberg and Mr. Corder.

Q. Was anything said at that time?

A. At the time of the opening?

Q. Yes.

A. Why, the bids were opened and handed to these various bidders, and they don't know whether they did or not; I was inside and they were outside of the railing.

Q. Then what happened?

A. It was announced that the Fowler Metal Company was the low bidder.

Q. And then what did they do? [281—231]

A. The award was made to the Fowler Metal Com-



(Testimony of J. A. Kettlewell.)

pany and the proposal given—or the award given to Mr. Silverstone.

Q. Then what did these men who were outside do?

A. Why, Mr. Corder came back about an hour later, I should judge, and made a very strong protest against the award being made to the Fowler Metal Company.

Q. Just tell the jury what he said at that time.

A. Mr. Corder protested against the award being made, and I asked him why. He said, "That man," as he referred to Mr. Silverstone,—I didn't know his name at that time,—he says, "That man doesn't represent the Fowler Metal Company or anybody else, but Jimmie."

Q. Who did he mean by Jimmie?

A. He meant Goldberg. And I said, "Well, I don't know anything about it; I can't help it; the award has been made," and he said, "It looks mighty funny to me." I says, "I guess I can't do anything about it now." He made a very strong protest against the award baing made. And nothing more was said at that time.

Q. Then what was the next connection your office had with this requisition?

A. The next business that we had was to pay the voucher, the check, when the voucher came through.

Q. The voucher came back, did it?

A. The voucher was prepared and came through in the usual course.

Q. And did you issue a check for it?

A. Yes, sir, a check was issued.

(Testimony of J. A. Kettlewell.)

Q. Now, the check in payment of the materials awarded under this contract, Mr. Kettlewell, were signed by whom?

A. By the Pay Officer in charge there.

Q. Did anybody other than an official have authority to sign those checks? [282—232]

A. No one but the officer to whose credit this money was deposited has authority to sign.

Q. And it was deposited to the credit of whom?

A. It came to the credit of Paymaster Orr.

Q. Now, Mr. Kettlewell, I show you Plaintiff's Exhibit "5" and call your attention to the photographic copies of that first instrument there. Do you know what the instrument is of which this is a photographic copy?

A. Copy of check issued from the navy pay office in payment for this Fowler Metal Company's zinc.

Q. When that check was made out, then what happened?

A. When this check was made out I phoned to Mr. Goldberg and told him that the check was ready, and the check was delivered either to Mr. Goldberg or to Mr. Silverstone, I don't remember which.

Q. What day was it delivered?

A. Delivered June first—no, delivered—delivered—delivered the day it was dated, May the 26th.

Q. May the 26th? A. The day it was dated.

Q. You don't remember to which man it was delivered? A. I couldn't say.

Mr. SCHLESINGER.—You mean May 26, 1908?

A. 1908, yes, sir.

(Testimony of J. A. Kettlewell.)

Q. When the check was delivered?

A. Yes, sir, the day the check was made, as I remember it was delivered.

Mr. RIDDELL.—As you remember, the check was delivered the day it was made.

A. As I remember. It may have been delivered the next day, but [283—233] I think it was the day it was dated. That was the usual procedure and I know we would want to get rid of it as soon as possible.

Q. Now, do you recognize the handwriting on the front of that check?

A. Yes, sir, that is Paymaster Orr's handwriting.

Q. And do you recognize any of the handwriting on the back of the check?

A. I couldn't say anything about that writing. I wouldn't recognize it as anybody's I know; I couldn't say, except, of course, that I recognize the Silverstone endorsement to being similar to the writing on the proposal, is all.

Q. Then, the writing on the proposal is in the same handwriting as the writing endorsed by E. Silverstone on that check?      A. Yes, sir.

Q. Now, one thing I neglected to call your attention to, Mr. Kettlewell. I have this bid to the American Iron & Metal Company. Do you know whose handwriting that is?

A. That is my handwriting.

Q. That is your handwriting. And that is the only handwriting that there is on the bid, all the rest is done on typewriter?      A. On typewriter.



(Testimony of J. A. Kettlewell.)

Q. After the check was delivered, Mr. Kettlewell, what was the next time you saw any of these defendants about this transaction, or had anything to do with them about the transaction?

A. Why, some time afterwards Mr. Goldberg gave me \$350.

Mr. ALLEN.—How much, three hundred and fifty?

A. \$350. That is only part of the answer. I was stopped before I finished.

Q. Now, at the time Mr. Goldberg gave you this money, Mr. Kettlewell, did you have any conversation with him about it?

A. Yes, he told me what it was for. [284—234]

Mr. RIDDELL.—Well, what did he say?

A. It was for my part of the profits on this zinc, and I called his attention to the excess delivery. I thought we ought to have some on that, too, but he couldn't see it that way and he wouldn't give me any more than the three hundred and fifty, so I let it go at that.

Q. Did he give you any reason why he couldn't give you any more?

A. He said that he had to give Meyer \$500, had to promise him \$500 before the requisition was made, and he would give me that much and he couldn't give me any more than that.

Q. Did you have anything further to do then with that transaction?

A. Well, that finished it up, I think, as near as I can recollect.

(Testimony of J. A. Kettlewell.)

Q. Mr. Kettlewell, I want to call your attention to Plaintiff's Exhibit "5." Now, the last paper on Plaintiff's Exhibit "5" is a photographic copy of what?

A. Photographic copy of the voucher in payment for the zinc on requisition 438.

Q. (Exhibiting folder to witness.) Now, I show you Plaintiff's Exhibits "4," "6," and "7." Plaintiff's Exhibit "4" is a photographic copy of the third of the requisitions in this case.

Mr. KERR.—A photographic copy of what, Mr. Riddell?

Mr. RIDDELL.—Of the third copy of the requisition in this case. And Plaintiff's Exhibit "4," being the navy yard folder for this requisition, is memorandum copy No. 4 of the requisition. In navy pay office folder are copies No. 6 and 2 of the requisition. I call your attention, Mr. Kettlewell, to the fact that this photographic copy of No. 3 and No. 4 are in type-writing and bear the extension of \$625. I show you the navy pay office folder and show you the addition of a cipher after the six hundred and twenty-five in each of those copies, making the total \$6,250. Do you know when [285—235] those changes were made on those two copies?

A. The copy received from the navy yard complete just as it is now and when it was received in our office it bore this extra cipher that you speak of.

Q. That is, the copy that came over from the navy yard had that cipher on it?

A. Yes. The second copy that we received from

(Testimony of J. A. Kettlewell.)

the bureau didn't have the cipher on and I simply added it to make it agree with the other copy.

Q. Do you know why the cipher was added before it got to your office?

A. Why, I don't know why. It is immaterial, I should think. The unit price is what we would be governed by.

Q. Mr. Kettlewell, have you any personal knowledge as to the time when that check was cashed or put in circulation? A. No,—

Mr. SCHLESINGER.—It calls for personal knowledge, if you know of your own personal knowledge.

A. If I remember, the copy shows it was cashed June the first, the photographic copy; that is all I know about it.

Q. You had no personal knowledge on it then?

A. No, sir.

Q. Mr. Kettlewell, when you were indicted on these charges you plead guilty to one count?

A. Yes, sir.

Q. Or to one indictment. And while you were incarcerated the other indictments were dismissed against you? A. Yes, sir.

Q. For what purpose?

A. For the purpose of making application for parole.

Q. Did you receive that parole? [286—236]

A. No, sir.

Mr. SCHLESINGER.—I object to that as immaterial, if your Honor please.



(Testimony of J. A. Kettlewell.)

The COURT.—Proceed.

Mr. SCHLESINGER.—Exception.

Mr. RIDDELL.—I think that is all.

Mr. ALLEN.—That is a very important witness for the Government, and if we think of something more we would like to call him later.

The COURT.—Yes. Cross-examine.

Mr. RIDDELL.—Your Honor, I ask the Court to instruct the jury about certain dates, 9th, 19th and 15th of April, 1908.

Mr. SCHLESINGER.—I suppose that will be covered by the usual instructions given to the jury. We object to this being argued in piecemeal. Let us have it all at once.

The COURT.—You are instructed that the 9th of April, 1908, was on Thursday, the 15th was on Wednesday, and the 23d was on Thursday.

Mr. RIDDELL.—The 11th was on what date?

The COURT.—The 11th was on Saturday.

Mr. RIDDELL.—Thursday was the 9th, Saturday was the 11th and Wednesday was the 15th.

The COURT.—9th, 11th and 15th.

Mr. SCHLESINGER.—What were the other dates?

Mr. RIDDELL.—Those are all I care about.

Mr. SCHLESINGER.—I think we ought have them all.

Mr. RIDDELL.—Mr. Kettlewell, on what date was the award in that case made?

A. The award was made the day the bids were opened.

(Testimony of J. A. Kettlewell.)

Q. And that was what date? A. The 15th.  
[287—237]

Q. That was the 15th. Now, when this requisition came over to you from the navy yard it contained a call for what delivery?

Mr. SCHLESINGER.—You mean the 15th of May, Mr. Riddell?

A. 15th of April.

Mr. RIDDELL.—When this requisition came over from the navy yard it called for delivery within how many days after the award?

A. Fifteen days.

Q. Within how many days did the proposals call for? A. Five days.

Q. Well, who made that change?

A. I made that change.

Q. Why? A. We wanted to get—

Mr. SCHLESINGER.—If your Honor please, the reason actuating this witness cannot be used against any one of these defendants. What was in his mind and what his purpose was is not binding upon us, and we object to it, as to why he did a certain thing.

The COURT.—He may give the reason the change was made.

Mr. SCHLESINGER.—Exception.

A. The change was made at the suggestion of Mr. Goldberg, that it would prevent the other people's bidding at all.

Mr. RIDDELL.—Now, the telegraphic information or authority to make the award came on the 9th, and you held that up until Saturday, the 11th?

(Testimony of J. A. Kettlewell.)

A. The awards weren't dated until the 11th.

Q. And they were sent out on the 11th?

A. Those that were mailed were mailed on the 11th.

Q. They were taken out—they were taken out the next week; probably Monday or Tuesday.

Q. And then the award was made? [288—238]

A. Wednesday.

Q. At what time of day?      A. At 12 o'clock.

Q. Now, when Mr. Goldberg paid you, what kind of money did he pay you in?

A. I presume most of it was in gold; it was currency, gold or current money. He never paid me with a check or anything like that.

Mr. MORRIS.—What is that about a check?

A. It was not paid in the form of a check or anything of that kind.

Mr. RIDDELL.—I think that is all, your Honor.

On cross-examination by Mr. MORRIS the said witness testified as follows:

Q. Your name is J. A. Kettlewell?      A. Yes, sir.

Q. Mr. Kettlewell, how old are you?

A. Forty-six.

Q. And you have lived in the State of Washington since about 1902?

A. 1901, I think it was, that I came here.

Q. And after you came to the State of Washington, or shortly thereafter, you became associated with the Puget Sound Navy Yard?

A. Yes, sir, in January, 1902, I think that I came there.



(Testimony of J. A. Kettlewell.)

Q. January, 1902. And you remained with the Government, rendering service at the Puget Sound Navy Yard, until the year 1906?

A. December, 1906; yes, sir.

Q. In the month of December, 1906, you withdrew from the Puget Sound Navy Yard and became associated with the Paymaster's Department of the Government, which was located in Seattle?

A. Yes, sir.

Q. At the time you became connected with the Paymaster's Department [289—239] that office was located in the Walker Building? A. Yes, sir.

Q. On Second Avenue, the corner of Second and what? A. Second and University.

Q. And you remained with the Paymaster of the United States Navy, or with the Paymaster's office of the United States Navy, until what date?

A. Until March 28, 1911.

Q. March 28, 1911. When you first entered the navy pay office of the Government, who was the Paymaster?

A. Paymaster Orr had charge, as I remember.

Q. You mean at this office here? My question, yes, sir, that is what we are talking about all the time, the Paymaster's office in Seattle and no other.

A. Paymaster Orr was in charge.

Q. You were connected with no other Paymaster's office, were you, outside of the services you rendered at Bremerton?

A. I thought you might have referred to the navy yard.

(Testimony of J. A. Kettlewell.)

Q. I designated it at Seattle.      A. Yes, sir.

Mr. MORRIS.—Paymaster Orr?

A. Paymaster Orr; yes, sir.

Q. And your duties under Paymaster Orr were what?

A. I had general supervision of the office force.

Q. Yes, sir. That is sufficient for the present time. You were then known as Chief Clerk, were you not, under Paymaster Orr in the Paymaster's office?      A. Yes, sir.

Q. Chief Clerk?      A. Yes, sir. [290—240]

Q. That means the Head Clerk?

A. Yes, sir.

Q. You were over all other clerks?

A. Yes, sir.

Q. Now, you remained as Chief Clerk under Paymaster Orr for how long?

A. I don't remember just the time of his detachment. I think it was—

Q. Sir?

A. I don't remember just when he was detached. I think he was there about two years.

Q. Well, that is all right. About two years. And you entered the service of the Paymaster's Department at Seattle in 1906, and you continued to serve under Paymaster Orr for two years. That would take you up to about 1908, would it?

A. Yes, sir, Paymaster Orr was there in 1908.

Q. 1908?      A. Yes, sir.

Q. Now, did Paymaster Orr leave the Paymaster's office in Seattle and did someone succeed him?

(Testimony of J. A. Kettlewell.)

A. Yes.

Q. And the officer who succeeded Paymaster Orr was whom? A. Paymaster Ryan.

Q. What was his name?

A. Ryan, R-y-a-n, Ryan.

Q. What was his full name? A. Eugene D.

Q. Sir? A. Eugene D. Ryan.

Q. Was Paymaster Orr or Paymaster Ryan in charge of the navy pay [291—241] office at Seattle on the first of April, 1908?

A. Paymaster Orr, I think, was in charge of the office at that time.

Q. Paymaster Orr. And can you tell this jury just approximately how long Paymaster Orr remained in charge of the office until he was succeeded by Paymaster Ryan?

A. I think that Paymaster Orr left this office in October of—I wouldn't say whether it was 1908, but I think it was in October, 1908, that Paymaster Orr left this office. I am not positive about that.

Q. And where is Paymaster Orr at the present time, do you know? A. No, sir, I do not know.

Q. Then after Paymaster Ryan became the chief of the navy pay office at Seattle, did he continue in such position until your arrest?

A. No, he was succeeded by Paymaster Mell.

Q. Now, Paymaster Ryan was in charge of the navy pay office at Seattle for how long after he succeeded Paymaster Orr?

A. I think he was here about three years, if I remember correctly.



(Testimony of J. A. Kettlewell.)

Q. About three years?      A. I think so.

Q. And that would take his services up to about 1911, would it?

A. Well, about the fore part of the year, I think. I wouldn't be positive about those changes in the paymasters. I never paid much attention to them.

Q. Well, your memory is good, is it not, Mr. Kettlewell?      A. It is fairly good.

Q. And if you worked under a man for two or three years you ought to be able at this short distance from that time to give the jury approximately the correct time.

A. Well, I would say that Paymaster Orr came to this office shortly [292—242] before—

Q. We have got that now. Just answer this question, unless you want to correct yourself. If you are not satisfied with your evidence.

The COURT.—Proceed with the answer. There is another unanswered question, I understand.

Mr. MORRIS.—I thought the point meant I should not interrupt the witness. I understood he was not answering the question, and I was trying to save the time of the Court.

Q. If your evidence is not correct, according to your present memory, I have no objection to your changing it.

A. You want me to give you the approximate time of all these three paymasters?

Mr. MORRIS.—I would be grateful to you if you would do so.

A. As I remember, Paymaster Orr came to this

(Testimony of J. A. Kettlewell.)

office in the fall of '96. As I recall, he was here shortly before I came here, and I came here December, '96. And he was succeeded by Paymaster Ryan, I think, in the fall of '98. I am not positive about that, but I think it was in the fall of '98. Paymaster Mell came to the office about, I should say, about six months before I left there, six months, approximately six months before the 28th of March, 1911. That is as near as I can recollect it.

Q. Now, let me see if we understand you. Paymaster Ryan was in charge of the pay office for about three years?

A. Well, less than three years.

Q. Less than three years?

A. I think less than three years.

Q. And his services terminated when approximately?

A. I think it was in October preceding the 28th of March, 1911, that he was succeeded by Paymaster Mell. [293—242½]

Q. How long was it after Paymaster Ryan's severance from the pay office that you were arrested?

A. It was on the 28th of March, 1911, that happened.

Q. The 28th of March. Now, I ask you the question, how long after Paymaster Ryan withdrew from the office was it that you were arrested?

A. Well, as I said a moment ago, I think it was in October of the preceding year that he was detached, as near as I recollect.

Q. It was between four and five months, probably?

(Testimony of J. A. Kettlewell.)

A. Yes.

Q. Some place along there?

A. Some place along there.

Q. And at the time of your arrest Paymaster Mell was in charge of the pay office?      A. Yes, sir.

Q. And during all of this time you rendered service to these respective paymasters as chief clerk?

A. Yes, sir.

Q. Again directing your attention to the navy pay office at Bremerton, the storekeeper's office over there is called a pay office also, is it not?

A. No, the pay office is usually referred to the paying office in the yard, usually referred to in the yard to the storekeeper's office, that is, general storekeeper's office. A pay officer is in charge of each.

Q. The pay officer had a title of paymaster?

A. Well, he had a title. It may have been Paymaster or Pay Inspector, or whatever his rank was.

Q. Now, in referring to the navy yard officers, I will refer to them in my cross-examination as the storekeeper's office so we will all understand what I mean. Now, during the time that you were [294—243] connected with the storekeeper's office at Bremerton, you were principal clerk?

A. Yes, sir.

Q. And as principal clerk did you have anything to do with the issuing of requisitions?

A. No, sir, I had nothing to do directly with that.

Q. Nothing to do with the preparation of requisitions?      A. No, sir.

Q. You knew, during the four or six years that



(Testimony of J. A. Kettlewell.)

you were connected with the storekeeper's office at Bremerton, the general routine that was followed in the preparation of requisitions? A. Yes, sir.

Q. You were thoroughly and *complete* familiar with all of the details relating to a requisition?

A. Yes, I knew how they were prepared.

Q. And you had that knowledge when you withdrew from the *storekeeper's knowledge* of the navy at Bremerton? A. Yes, sir.

Q. And came over to assume the Chief Clerk's position in the Paymaster's office in Seattle?

A. Yes, sir.

Q. Now, after arriving at the Paymaster's office in Seattle, was it your duty, or was it the duty of the Paymaster to examine the requisitions that were received from the storekeeper's office at Bremerton?

A. It was the duty of the Paymaster.

Q. It was the duty of the Paymaster. And it was the duty of each and every one of these respective paymasters to which you have referred?

A. Yes, sir. [295—244]

Q. And especially as to Orr and Ryan?

A. Well, all of them.

Q. All of them? A. Yes.

Q. Mr. Ryan performed those duties, did he?

A. Yes, sir.

Q. Now, when a requisition was originated in the storekeeper's office in Bremerton, and especially such a requisition as is involved in this trial, copies of said requisitions were, by the storekeeper at Bremerton, sent to the department at Washington?

(Testimony of J. A. Kettlewell.)

A. Yes, sir.

Q. Sent by mail as in this particular case the record shows?

A. I beg your pardon. I didn't hear the question.

Q. (Question repeated.) A. Yes.

Q. And at the time that the requisition was sent from the Paymaster's office at Bremerton, or the storekeeper's office, through Washington, a like copy was mailed to the purchasing pay officer here in Seattle? A. Yes; yes, sir.

Q. In other words, a purchasing Paymaster in Seattle received the information within a few hours after it was sent from Bremerton, while the department at Washington did not receive that information until several days thereafter?

A. Yes, that is true.

Q. When that advance information came into your office by a receipt of a copy of the original it furnished you knowledge, of course, as to what the Government was doing in the storekeeper's department thereof? A. Yes, sir. [296—245]

Q. Now, this mail that was received from the storekeeper's office at Bremerton, was it opened by you?

A. Not always, no, sir; either myself or the Paymaster.

Q. But if it was opened by the Paymaster it was thereafter directed to your attention, was it not?

A. It would be all turned over to me.

Q. It would be all turned over to you?

A. Yes, sir, and I stamped it; yes.

(Testimony of J. A. Kettlewell.)

Q. Then, I understand you, it was the general custom for the Paymaster to open it and thereafter to deliver it to you for further attention?

A. Yes, sir.

Q. You mean by opening the mail, he opened it and familiarized himself with it and then handed it to you? A. Yes.

Q. These Paymasters to whom you have referred were officers of what rank, do you know, in the navy service?

A. Why, Paymaster Orr was a—he was a Paymaster with the rank of Lieutenant, I think; and Paymaster Ryan was a pay inspector with the rank of Lieutenant-commander; Paymaster Mell was a Paymaster with a rank of Lieutenant, I think.

Q. They were bonded officers of the Government?

A. Yes, sir.

Q. Now, after a requisition would reach your office, if you acted upon said requisition, you would prepare what is known as proposal? A. Yes, sir.

Q. And those proposals were by you in person, or under your direction, sent to respective suppliers of the different localities? [297—246]

A. They were mailed by the clerk in charge of that particular work, usually.

Q. By the clerk? A. Yes, sir.

Q. Under your supervision, though, was it not?

A. Yes, as the clerk of the office; yes.

Q. Under your direct supervision. You knew what was taking place in each one of these cases, did you not or was it left purely to Paymaster Ryan?



(Testimony of J. A. Kettlewell.)

A. Oh, the Paymaster had direct knowledge of all that was going on, all of the proposals that were sent out, they were all under his direct supervision, and also under my supervision.

Q. Now, accompanying these proposals, and I inclosed in the same envelope, was an extra envelope in which the merchant to whom these proposals were sent, might, if they desired, inclose their bill.

A. Yes, sir.

Q. And return same in that envelope to the Paymaster? A. Yes, sir.

Q. And that was the regular routine procedure?

A. Yes, sir.

Q. On the envelope that was inclosed to the prospective bidders was a designation as to when the purchasing pay officer would open those bids?

A. Yes, sir.

Q. And that was placed thereon for the purpose of notifying all persons who placed bids for an article requisitioned for that they might be present and meet, face to face, those other persons who were bidding against them? A. Yes. [298—247]

Q. So there would be nothing secret about it?

A. That is it.

Q. When those bids were received, as a general thing, who opened them?

A. The Paymaster in charge opened the bids, as a rule.

Q. He is the person who first familiarized himself with the bids that had been submitted?

A. Yes, sir.

(Testimony of J. A. Kettlewell.)

Q. Mr. Kettlewell, previous to your arrival in the city of Seattle, 1901, or 2, had you lived in the East?

A. Yes, sir.

Q. At the age of 19 years you were a telegraph operator, were you? A. Yes, sir.

Q. Or was it fourteen?

A. Well, I was younger than 19; somewhere around seventeen or nineteen.

Q. You were, as a matter of fact, a telegraph operator for a period of 19 years? A. Yes, sir.

Q. In operating the instrument you used your right hand? A. Yes, sir.

Q. And equally well your left hand?

A. No, sir.

Q. You used both hands, did you not?

A. I used my right hand.

Q. Did you not also use your left hand?

Mr. ALLEN.—Your Honor, I can't see any possible relevancy or materiality in that.

The COURT.—Proceed.

A. You mean in using a telegraph instrument that I would use my [299—248] left hand; is that what you mean to ask?

Mr. MORRIS.—Yes, sir; you can say yes or no to that.

A. No.

Q. You invariably used your right hand in operating the instrument? A. Yes, sir.

Q. In sending or receiving a message?

A. In sending a message.

Q. In receiving a message would it be necessary

(Testimony of J. A. Kettlewell.)

for you to put your hands on the keys at times to chop in?

A. Not in receiving a message, not necessarily, no, sir.

Q. Something might arise, might it not?

A. Something might, yes.

Q. At the same time you were doing that you used your left hand in writing, did you not?

A. No, sir.

Q. Is it not a fact that in that means you acquired the ability of writing with either your right or your left hand?

A. No, I can't write with my left hand.

Q. Is it not a fact that you can, with your right hand, write a great many different hands?

A. No, sir.

Q. You say you have but one, but one way of writing, that is right, is it?      A. Yes.

Q. While you were connected with the navy pay office is it not a fact that on numerous occasions you opened the bids of merchants and changed and altered those bids?

A. Well, the question would imply three or four different procedures. I never opened any of the bids, but some of them were changed afterwards.  
[300—249]

Q. You say to this jury now that you never stealthily opened any bids of any merchants before they had been published by the office, changed same and re-sealed them?

A. It wasn't done in that way, no, sir.



(Testimony of J. A. Kettlewell.)

Q. Never did. It is not a fact that you did, while you were Chief Clerk to the Paymaster, on numerous occasions change and alter *bona fide* bids that had been submitted by merchants of this vicinity and elsewhere? A. Yes, that was done.

Q. Is it not a fact that after those bids had been changed that they passed through the Paymaster's hands? A. Yes, sir.

Q. And those bids were changed and the alterations made in your natural handwriting or figures?

A. No, not always. Not—

Q. Were they sometimes—

Mr. ALLEN.—Let him answer the question.

The COURT.—Proceed. Let him answer.

A. No, they were written in very slowly and carefully in probably what might appear another handwriting. I wrote them in very slowly and carefully to change the figures.

Q. Did you not testify in the case in this court on another indictment, in which this defendant Meyer was on trial, that you changed and altered bids both in the handwriting—that is, in words, letters and figures in your natural hand, not disguised? Answer that yes or no.

Mr. ALLEN.—Your Honor, I submit—

Mr. MORRIS.—I am entitled to an answer yes or no.

The COURT.—If he can answer it yes or no, then he can follow it with any explanation he desires to make. [301—250]

Mr. MORRIS.—I will read it to him. I want him

(Testimony of J. A. Kettlewell.)

to answer now. Read the question.

Q. (Question repeated.)

A. I can't answer that yes or no, because I think it is misleading. I admit freely that I changed these bids. There is no question about that. I am not trying to evade that, but I don't know in what writing—in what way.

Q. I understood you to testify a while ago that you could not write several distinct and separate hands?

A. No, I can't more than any other man.

Q. Well, some persons are so expert with the pen that they can do that.

A. I am not an expert.

Q. Now, I want to ask you this question, and would like to have you answer it. Is it not a fact that while you were Chief Clerk you altered bids that came into your hands and after they were altered, without your handwriting being disguised, they were passed up to and inspected by Paymasters in chief of the office?

A. Yes. Let me qualify it by saying I changed these bids. I don't deny that. And that they were passed to the Paymaster. As to the writing, I paid no particular attention to that; I wouldn't say yes or no about that.

Q. Well, then, answer it now. Is it not a fact, that in some instances your handwriting was disguised and in other instances it was not?

A. Yes, I think that is true.

Q. That is all I want or tried to get you to say.

(Testimony of J. A. Kettlewell.)

And in these altered bids by you passed up to the Paymaster, and by him inspected, which was in your natural hand, your attention was never called to that fact by the Paymaster, was it? [302—251]

A. No, sir.

Q. Mr. Kettlewell, you were arrested on what day? A. March 28, 1911.

Q. March 28th. And shortly after you were apprehended you were released on bail?

A. Yes, sir.

Q. And some days after you were released on bail you secured the services of an attorney, did you?

A. Yes, sir.

Q. Previous to securing the services of said attorney, had you ever met or did you know who he was?

A. No, sir.

Q. Previous to securing the name of said attorney, were you acquainted with a gentleman by the name of Charles F. Hutson? A. Yes, sir.

Q. At that time Mr. Charles F. Hutson was Deputy United States Attorney? A. Yes, sir.

Q. At that time Mr. Hutson was investigating these crooked transactions which the Government had discovered existed in the Paymaster's office in this city? A. Yes, sir.

Q. You were being opportuned at said time by numerous of the secret service operatives and Mr. Hutson to tell the persons who were mixed up in these crooked transactions?

A. They found out all about this, yes.



(Testimony of J. A. Kettlewell.)

Q. I didn't ask you if they found out all about this. Watch this question, now, and answer it.

(Question repeated.)

A. At what time do you mean?

Q. Shortly after your arrest and before you employed Mr. Riddell? [303—252]

A. Yes, just after I was arrested; yes.

Q. Now, in the course of this investigation that was taking place, before Mr. Riddell was employed, several names were mentioned to you by the investigating officers as to their association in connection with these crooked transactions that they then discovered, or had previously discovered? A. Yes.

Q. And Mr. Hutson, the then United States District Attorney, advised you to secure the services of Mr. Charles F. Riddell, did he not?

A. Yes. I would like to say how he did it, though. I asked him in regard to an attorney, and he says, "H," he says, "I can tell you several; anyone of them would be square with you." And I decided in my own mind to take the first man that he mentioned. And several days afterwards I asked him again about it. "Well," he says, "I don't like to recommend anyone," but when I insisted on it finally he told me he thought Mr. Riddell would be all right, and I went down to see him and employed him.

Q. Let me ask you if these questions were not propounded to you by myself on the former trial to which I referred a while ago: "Were you represented by counsel previous to your plea of guilty?" Your answer, "Yes, sir." "Was your attorney in

(Testimony of J. A. Kettlewell.)

court with you at the time you entered your plea of guilty?" "Yes, sir." "Who was your attorney at that time?" Answer: "Mr. Charles F. Riddell." "When did you employ Mr. Riddell to represent you, how long after your arrest?" "Why, within a few days." "Did you know Mr. Riddell previous to the time that you employed him?" Your answer, "No, sir." "You were advised by some one to employ Mr. Riddell?" Your answer, "I wouldn't say that." Question, "Will you say you were not, then?" You answered, "No, I wouldn't say that either." Following with your [304—253] answer, "I would say I was introduced to Mr. Riddell." My question, "By whom?" Answer, "By Mr. Hutson." Question, "By Mr. Hutson, who was then the Deputy United States Attorney that was handling these cases?" You answer, "Yes." That is true, is it not, you so testified?

A. Yes, I think that is correct.

Q. At the other trial?

A. I think that is correct, as near as I can recollect.

Q. Just as I have read the questions and answers to you?

A. I think that is correct, yes, sir. That is true, as I remember it.

Q. How long after you secured Mr. Riddell's services was it, about, that you came into this court and entered your plea of guilty? Just approximately.

A. I entered a plea of guilty on September 18, 1911, at Tacoma.

(Testimony of J. A. Kettlewell.)

Q. In September?      A. Yes.

Q. And along in the previous June, or latter part of May, you had secured the services of Mr. Charles F. Riddell?      A. Yes, in April, I think it was.

Q. And the Charles F. Riddell to whom you refer is the gentleman who is now prosecuting these defendants?      A. Yes, sir.

Q. As special prosecutor in this case?

A. Yes, sir.

Q. Did you answer, Mr. Riddell, that you had pleaded guilty to this particular indictment, had been sentenced, served your time and pardoned?

A. No, I didn't plead guilty to this particular indictment. In fact, I couldn't say now—

Q. I didn't ask you that question.

Mr. ALLEN.—I submit, your Honor, he may answer the question. [305—254]

Mr. MORRIS.—He has answered he didn't plead guilty to this particular indictment and that is the end of it.

The COURT.—Proceed.

Mr. MORRIS.—You were indicted by the grand jury that returned this particular indictment some three or four times?

A. I think it was the same grand jury, yes.

Q. Yes, sir. You were indicted about seven times, were you?

A. I don't remember how many times. There were a number of times.

Q. You never paid any attention to the number of indictments that were laid against you, is that



(Testimony of J. A. Kettlewell.)

correct? A. Yes, that is practically correct.

Q. That is correct. And it is a fact, is it not, that you do not know at the present time, and never did know, the particular charge laid in the particular indictment to which you entered a plea of guilty?

A. Yes, I remember the charge very distinctly in that indictment.

Q. Did I not ask you in the other trial of this case, on cross-examination, if you could state the charge to which you entered a plea of guilty, the number of the indictment, and you answered that you could not, that you entered a plea to the general charge of conspiracy? Now, answer that yes or no.

A. Well, I can't answer that yes or no because it involves several points. You asked me if I knew the number. I don't know the number of the indictment. I know, in a general way, it referred to a tallow transaction, is all I know about it.

Q. It referred to the Peter Brandt tallow transaction?

A. Yes, sir, I am pretty certain that it did.

Q. And that is the only indictment to which you have entered a plea? A. Yes, sir.

Q. Is that right? [306—255] A. Yes, sir.

Q. I mean, have entered a plea of guilty?

A. Yes, that is right.

Q. From your personal knowledge, will you state to this jury how many indictments are now pending against you in this court that was presented by the grand jury which returned this present indictment?

(Testimony of J. A. Kettlewell.)

A. Well, I understand they all have been dismissed.

Q. Have you any personal knowledge as to whether they have or not?

A. I have the information printed in the papers to know, the time I was at McNeil's, that the indictment had been dismissed. There was a news item to that effect, and I know it is a fact; I am told so.

Q. And those indictments were dismissed because you had rendered service to the Government in turning State's evidence, were they not?      A. No, sir.

Q. What was the consideration for the dismissal of those indictments within your knowledge, then?

A. No consideration. They were dismissed at my request on Mr. Hutson so that I could enter a plea, or an appeal, or I could apply, rather, for parole, and the rules are, if any pending indictments exist that the parole can't be granted, and I asked him to help me get a parole.

Q. In other words, state it in this way: You had agreed with Mr. Hutson, the gentleman who referred you to Mr. Riddell, that if they would intercede and secure a pardon for you that you would come into court as a Government witness and testify in these respective cases?

A. No, sir, no agreement of any kind made.

Q. Do you say that at the time that the United States Government, [307—256] through its Deputy District Attorney, interceded in your behalf that no inducement, either directly or indirectly, had been made relative to what you should do in return for

(Testimony of J. A. Kettlewell.)

services that you had rendered? A. Yes, sir.

Q. Do you say to this jury that you did not expect the Government, through its District Attorneys, to annul and protect you from further prosecution in any of these alleged indictments to which you had not pleaded guilty? Now answer that.

A. No, I expected no further protection from them. I would like to say what I did expect, what I did think. I was sentenced to one term for conspiracy, and I knew that I had no reasons to suspect, didn't think it was the policy of the Government to repeat, repeatedly try me for the same offense. It was all one offense, you see. There were a great many little indictments under that. It was practically all one offense, and I knew it wasn't the practice of the Government to prosecute more than once.

Q. How do you know it wasn't the custom of the Government to prosecute more than once when this defendant right here is being prosecuted twice within a year?

A. I served my time and answered the Government's requirements. I don't see they could come back at me again; I don't see why they should.

Q. Don't see why they should?

A. No, I have no reason to suspect they would.

Q. You knew, sir, you were indicted for defrauding the Government in the Peter Brandt transaction, did you not? A. I did, and I paid for it.

Q. Pled guilty to it?

A. Pled guilty to it.

Q. You knew you were alike guilty for defrauding



(Testimony of J. A. Kettlewell.)

the Government in [308—257] the Smith-Hunt transaction, did you not?

A. They were all one and the same.

Q. They were all separate and distinct indictments, were they not, and you knew it?

A. Yes, so far as that goes.

Q. You knew that you were guilty in the Lyman-Evans transaction, did you not?

A. All of these I admit to, yes, sir. I have told all about my part of the business from A to Z, and I have served my time, and I am free—

Q. You have served your time in one instance, one charge?

Mr. ALLEN.—This witness should be permitted to answer that question.

The COURT.—Wasn't the answer concluded?

Mr. ALLEN.—It wasn't, your Honor.

The COURT.—Did you want to answer further, Mr. Kettlewell?

A. I say that I know, from the way the Government has handled cases of this kind, that one term of imprisonment wipes out the whole thing. I had no further fear of any further punishment. I had conspired, and I told them about it, and I had made a clean breast of it, and I had served my time and I was through with it. That is all there was to it. I have no further fear on the part of the Government doing anything to me. I had served my time and had nothing further to fear.

Q. You have been informed that the Statute of Limitation for a crime of the kind in question is three

(Testimony of J. A. Kettlewell.)

years, have you not? A. I knew that, yes, sir.

Q. You know it. You know at the present time that you did, while in the Paymaster's Office, commit crimes against which the Statute of Limitations has not run at the present time? [309—258]

A. Yes, sir.

Q. And you know that if the Government saw fit to prosecute you for those crimes, that under the facts within their knowledge with reference to your acts, that they could convict you?

A. I presume they could.

Q. Yes, sir. And, in the face of that knowledge, you state to this jury that you have no fear of being further prosecuted?

A. No, sir; I consider that I have fully repaid—answered the requirements of the law, and I have no fear whatever.

Q. And you have had no assurance from anybody, either directly or indirectly, that has caused you to have such an opinion?

A. No, I would like to explain what I mean.

Q. Answer the question and then explain.

Mr. ALLEN.—Go ahead and explain. Your Honor, may he answer the question? He has started to.

By the COURT.—He may conclude his answer. He answered it directly. Now he may make any explanation he desires.

Mr. MORRIS.—I have no objection to it.

A. I know it has been the custom of the Government not to extend these prosecutions into persecu-

(Testimony of J. A. Kettlewell.)

tions. All these acts really constituted a conspiracy; they were all one, part of one and the same act or the same conspiracy. I plead guilty to one indictment and I felt assured, from what I know of the Government procedure, that one term of punishment would be all that I would be required. No one told me anything about this, except I had this knowledge in a general way, was assured that is what would be done.

Q. How did you acquire the knowledge in a general way you have just imparted to this jury?

A. Well, for instance, I had in mind Mr. Hillman's case, where he had been— [310—259]

Q. You didn't acquire that knowledge from Mr. Hillman's case, did you?

A. Not necessarily, but that was one case came to my mind.

Q. That opinion you acquired ought to be as applicable to a man who had been acquitted of offenses as to one who had served his term, if the conspiracy is general all the way down the line, is that not right?

A. I heard one part of your question—

Q. Mr. Kettlewell, do you remember of a transaction with which you were connected, which passed through the purchasing Paymaster's Office while you were his chief clerk, in relation to a bid that had been submitted by Miles-Piper & Company of this city, and which you raised? A. Yes.

Q. After you raised that bid, it was by you passed up to the Chief Paymaster?

A. Yes, he saw the bid.



(Testimony of J. A. Kettlewell.)

Mr. SCHLESINGER.—In order that we may not have to make that offer in the presence of the jury, because, that would, of course, probably prejudice the case of the Government, may we submit to this Court a list of those transactions, make our offer in writing and have it embodied in the record?

By the COURT.—You have my permission. Submit your offer and then I will consider it.

Mr. SCHLESINGER.—We will do that probably sometime to-morrow. I understand we have the right to cross-examine with respect to the other matters.

(Jury recalled.)

Q. Did you disguise your figures so Paymaster Mell could not recognize them? [311—260]

Mr. ALLEN.—I object. There is no date fixed of this transaction.

By the COURT.—Let him answer. Objection overruled. Exception allowed.

A. It seems all these questions would—

Q. Answer the question, would you please?

A. No, sir, I will not, because I think these are, as I understand it, are within the statute. I don't want to incriminate myself.

Mr. SCHLESINGER.—Within what statute?

A. Limitations. I don't want to incriminate myself in any way.

Mr. MORRIS.—We will appeal to the Court.

By the COURT.—I will state to the witness you needn't answer this question or any other question, except with relation to the testimony concerning the

(Testimony of Mrs. Ethel J. Coombs.)

transaction in issue here, that might tend to incriminate you of any offense. You can simply claim your privilege and the Court will recognize that.

Mr. SCHLESINGER.—On cross-examination of a witness? Then we will have to decline to cross-examine.

**[Testimony of Mrs. Ethel J. Coombs, for Plaintiff.]**

Mrs. ETHEL J. COOMBS, a witness produced on behalf of plaintiff, having been first duly sworn, testified as follows:

Direct Examination by Mr. ALLEN.

My name is Ethel J. Coombs. I now reside at 701 North 64th Street, Seattle, and have lived in Seattle about twelve years. In the year 1907 I lived on 11th Avenue. I know Mr. Meyer. Mr. Meyer roomed at my home. As near as I can remember he came to live in my home in the Spring of 1906. I think it was either [312—261] the latter part of February or the first of March. I think he lived there six or perhaps seven months. I think he moved the latter part of September or the first of October, somewhere along there. It has been so long I just can remember. I had a telephone in my home during that time. Mr. Meyer very often used said telephone. I had an opportunity once in awhile to observe him talking to different people over the phone.

Q. Holding conversation with them. Did you ever hear him have a conversation with a man named Goldberg, is one or more—

(Testimony of Mrs. Ethel J. Coombs.)

A. Yes, I remember once of—I don't know whether—once, anyway, I don't know whether it was once or twice, several times I heard him go to the phone and someone would call and he would go to the phone. Perhaps I would answer the phone or perhaps his wife, and he would say, "Is this Goldberg," or—

Mr. SCHLESINGER.—Or what?

A. He would say—someone would answer over the phone. He would say, "Hello, is this Mr. Goldberg?" I have heard that name. I recognize that name by reading it in the paper, so then since this trial has been going on, so it came to me that I had heard it before.

Q. Did you ever hear him make any engagement over the phone to meet Mr. Goldberg?

Mr. SCHLESINGER.—That is leading.

Q. I will put it in another form. Did you ever hear him, over the phone, make any engagement with any person to meet them down town on any occasion?

Mr. SCHLESINGER.—I don't know why we should needlessly consume time of the Court.

By the COURT.—Make the objection.

Mr. SCHLESINGER.—Our objection is the testimony is too remote. [313—262] It relates to a conversation occurring in 1906, and what has it to do with the matter we are now investigating?

By the COURT.—Is that the time, 1906?

Mr. KERR.—Between March and September, 1906.



(Testimony of Mrs. Ethel J. Coombs.)

Mr. ALLEN.—Two years before this transaction.

By the COURT.—He may answer, if that is the only objection.

(Question read.)

Mr. KERR.—I object to that. If she heard any conversation over the phone, she can state the conversation, not the conclusion. She couldn't certainly hear Mr. Goldberg talking over the phone with another gentleman.

By the COURT.—State what he said.

Q. State what he said.

A. What did he say?

Q. What did Mr. Meyers?

Mr. SCHLESINGER.—May I ask the witness a simple question before she answers the question? I want to know from you whether you have, ever in your life, heard Mr. Goldberg talk.

A. Talk, no.

Mr. SCHLESINGER.—How does she know his voice then?

A. No, I didn't know from the other side what was said at all. I simply heard him say, "Yes, I will be down," something of that kind. That is all.

Q. Did you hear any mention on this occasion—

Mr. KERR.—Manifestly leading.

Q. (Continuing.) —of the name of the man, by his using the name of the man whom he was going to meet down town?

Mr. SCHLESINGER.—I object to that as not being binding on the man whose name is supposed to have been used.

(Testimony of Mrs. Ethel J. Coombs.)

By the COURT.—She may state what conversation she heard, what name [314—263] was used by Mr. Meyer at the phone.

Mr. SCHLESINGER.—Exception.

(Question read.)

A. I never heard any conversation, only he said, “All right, I will see you,” or something of that kind. “I will be down town.”

Q. Did you ever hear this conversation with reference to a man by the name of Goldberg, with reference to meeting him down town?

Mr. KERR.—I object to that as leading and suggestive and incompetent and improper.

By the COURT.—Just let her state what was said.

A. It has been so very long, I can’t remember anything more than he answered the phone. He said, “All right, I will be down,” that is all.

Q. In one of these conversations, in which you knew some man whom he addressed as Goldberg—a man whom he, Mr. Meyer, addressed as Goldberg, at the other end of the line,—did you in any one of these conversations hear Mr. Meyer say that he would meet this man down town?

Mr. SCHLESINGER.—I object to that as not being in any wise binding upon the defendant, Goldberg.

By the COURT.—She may answer it. Objection overruled. Exception allowed.

A. No, I simply heard—he would say “Yes” or “No”; that would be all on the phone in that way.

Mr. ALLEN.—This is one of the permissible occa-

(Testimony of Mrs. Ethel J. Coombs.)

sions upon which a man may ask a question of his own witness, that is in the case of surprise. This witness came to my office and told me one story—

Mr. KERR.—I object, in the presence of the jury.

By the COURT.—The jury is instructed not to pay any attention to it. [315—264]

(Question read.)

A. Well, I don't know as he said to Mr. Goldberg particularly, but I have heard him speak to others and say, "Well, all right," or "I will meet you," and say a word like that, but I don't know whether it was particularly to Mr. Goldberg or not, but I have heard Mr. Goldberg's name over the phone, heard him answer.

On cross-examination by Mr. MORRIS the said witness testified as follows:

Q. It is not a fact that from the time Mr. Meyers and his wife left your house, there has been no speaking acquaintance between you and either Mr. Meyers or his wife?

A. You say there hasn't? Did you ask me out there—

Q. Yes.

A. No, I haven't never had any conversation with Mr. Meyers.

Q. You don't speak as you pass by on the street?

A. No, we don't.

Q. There is ill-feeling existing between you and Mr. and Mrs. Meyers?

A. Yes, it must be. We haven't never spoke or never had any occasion to meet since he left there.



**[Testimony of F. D. Stewart, for Plaintiff.]**

F. D. STEWART, a witness produced on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct examination by Mr. ALLEN.

My name is F. D. Stewart. I reside at Kennidale. I have lived here in King County eight years. I am not connected with the Pacific Engineering Company now. I was employed during the year 1908 with [316—265] the Pacific Engineering Company.

Q. I will call your attention to Plaintiff's Exhibit No. 7, the same being the folder enclosing the copy of the requisitions, and also the bids or the proposals in this requisition No. 438. Take a look through those proposals and see if you can find the proposal of your concern. Do you recognize that?

A. Yes, sir.

Q. I call your attention to that particular part of it which reads now, "Fifty thousand pounds of zinc with the Railroad Company," and other descriptive matter, and the pencil notation out here at the right, the figure "14" under the head "cents," and the sum of "\$5000." Those are pencil notations. Who made those notations on that pad? A. I did.

Q. I call your attention to the first figure of fifty thousand pounds. What was the condition of that, if you recall, at the time that that bid was made?

A. I bid on five thousand pounds there, specified it out here. I bid on five thousand pounds on that bid, five thousand pounds.

Q. That is your pencil notation?

(Testimony of F. D. Stewart.)

A. Yes, sir, specified for five thousand pounds.

By the COURT.—Has that been identified?

Mr. ALLEN.—It is admitted in evidence.

By the COURT.—What exhibit is that?

Mr. ALLEN.—That is Exhibit “7.”

On cross-examination by Mr. SCHLESINGER the said witness testified as follows:

I bid at the rate of fourteen cents. I regarded that as a legitimate profit. I always put in a legitimate profit. [317—266]

On redirect examination by Mr. ALLEN the said witness testified as follows:

Q. Any profit you could get, you would consider legitimate, wouldn't you?

Mr. SCHLESINGER.—We object to that, if your Honor please.

On recross-examination by Mr. SCHLESINGER the said witness testified as follows:

Q. Do you know how much zinc you had on hand at that particular time?

A. I don't know at that particular time; no sir.

**[Testimony of Mrs. Sarah E. Rubenstein, for Plaintiff.]**

Mrs. SARAH E. RUBENSTEIN, produced as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. ALLEN.)

My name is Mrs. Sarah E. Rubenstein. I live at 1900 Spruce Street. I am a widow. The name of

(Testimony of Mrs. Sarah E. Rubenstein.)

my husband was Jacob Rubenstein. Just prior to his death he was connected with the American Iron & Metal Company. It was a corporation. I was an officer in that corporation. I was the secretary. Mr. Rubenstein was the president. My husband was in business at 1006 First Avenue South, in this city. His business was that of buying up junk and new and old—whenever he got a chance, jobbing lots or buying places and selling. My husband did not keep any stock down there, any quantities of new [318—267] goods, for which he would peddle in the market or sell in the market. He confined his operations to old goods. He died 1910.

Q. Was the business of your husband in 1908, in size or amount of money he had in the business, was it substantially what it was in 1910? A. No, sir.

Mr. SCHLESINGER.—We object to that as calling for the opinion of the witness, incompetent, irrelevant and immaterial, and nowise binding upon the defendant.

By the COURT.—OBJECTION OVERRULED: EXCEPTION ALLOWED.

Mr. SCHLESINGER.—And it refers to the affairs of a corporation, of which this lady was simply secretary.

By the COURT.—OBJECTION OVERRULED: EXCEPTION ALLOWED.

A. Not quite as much.

Q. It was not quite as much in 1908 as it was when he died, is that the idea? A. No.

Q. How big was it then in 1910, what was the



(Testimony of Mrs. Sarah E. Rubenstein.)

amount of the estate?

A. Well, the estate was supposed to be—

Mr. SCHLESINGER.—We object to that as absolutely immaterial.

By the COURT.—She testified with relation to a corporation, and you asked with relation to the individual estate.

Q. Who else was interested in the corporation besides your husband and yourself, anybody?

A. Nobody, but the most of it was attended to by himself. I didn't attend to it but very little.

Q. Did anybody else have any stock in the company? It was his concern, wasn't it?

A. No, sir.

Q. With that explanation, state what the value of all the property [319—268] of the company was when he died?

Mr. SCHLESINGER.—I object to that upon the grounds it is absolutely incompetent, irrelevant and immaterial, not within the issues here and in no wise binding upon any of these defendants.

By the COURT.—OBJECTION OVERRULED: EXCEPTION ALLOWED. It is all for the jury.

A. Supposed to be about \$6,000.

Q. That was all of the assets of the concern?

A. That is all there were.

Q. In 1908 it was less than that? A. Yes, sir.

Q. Did your husband ever carry any stock down at your place, or over at Goldberg's, or anywhere else, in zinc plate, \$6,000 worth of new zinc plate?

A. Never.

(Testimony of Mrs. Sarah E. Rubenstein.)

Mr. SCHLESINGER.—Will you show her that paper?

Mr. ALLEN.—I am preparing to.

Q. Can you read, Mrs. Rubenstein? A. Yes.

Q. Take a look at this, which purports to be—it is from Plaintiff's Exhibit "7," the proposal of the American Iron & Metal Company, which is written, as you will see, with a typewriter.

Mr. SCHLESINGER.—Let her read it out loud, if she can.

A. Five thousand pounds zinc, old sheet boiler plates.

Q. Read at the bottom there, see the way the signature is made. Do you see how that is made, down here, how that is signed?

A. Yes, that is American Iron & Metal Company.

Q. What is it written with, that is what I am asking you? A. Typewriter.

Q. Did you have a typewriter down there in 1908? [320—269] A. Never had any typewriter.

Q. Did you ever hear of Mr. Rubenstein filling out a bid for his company, using a typewriter to fill out one of these? A. No, sir.

Mr. SCHLESINGER.—We object to that. How can that be in any wise material.

By the COURT.—It isn't going to be pursued any further, is it?

Mr. ALLEN.—Just that point.

Mr. KERR.—We move to strike it out on the ground it is absolutely immaterial.

(Testimony of Mrs. Sarah E. Rubenstein.)

By the COURT.—MOTION DENIED: EXCEPTION ALLOWED.

Q. Do you know Mr. Goldberg, this man sitting back? A. Yes, sir.

Q. State the business or other relations of your husband and Mr. Goldberg, for the year 1908, or prior thereto, if you know them.

Mr. SCHLESINGER.—I object to that as absolutely immaterial, incompetent and irrelevant and in no wise binding. What has that to do with this case.

By the COURT.—She may answer. OBJECTION OVERRULED: EXCEPTION ALLOWED.

A. I don't know exactly 1908, but I know Mr. Goldberg used to give my husband money to buy, where he couldn't buy, or my husband found a place and he didn't have the money, and he gave him the money to buy.

Mr. SCHLESINGER.—We move to strike out the last part of the witness' answer as not being in any wise responsive. The question of counsel was properly confined to 1908.

By the COURT.—MOTION DENIED: EXCEPTION ALLOWED.

Q. How long were they in close association, in this way, in a business way, to your knowledge? [321—270] A. To my knowledge is about from 1907.

Q. Down through 1907 and 1908, and on down until he died? A. Yes.

On cross-examination by Mr. SCHLESINGER the said witness testified as follows:

Mr. SCHLESINGER.—Not waiving, of course,



(Testimony of Mrs. Sarah E. Rubenstein.)

any of our objections heretofore made.

Q. Did Mr. Goldberg ever personally lend your husband a single ten cent piece? Weren't moneys loaned to your husband by the Great Western Smelting & Refining Company?

A. That is what I—Mr. Goldberg claimed that he loaned him money.

Q. They really were loaned by the Great Western Smelting & Refining Company?

A. That was loaned in 1910 only, but I know that Mr. Goldberg loaned—

Q. And the Great Western Smelting & Refining Company is having some controversy—I don't care to have the nature of it exposed here—but has it some controversy with your concern over business matters? Just yes or no. A. Yes.

On redirect examination by Mr. ALLEN the said witness testified as follows:

Q. I call your attention to part of Plaintiff's Exhibit No. 19, the same being a copy of the proposal submitted in the name of the American Iron & Metal Company, of date March 18, 1908, and bearing a certain signature. Take a look at that. Is that the signature of your husband, can you tell there, Mrs. Rubenstein? A. Yes, sir. [322—271]

Q. That is your husband's signature?

A. Yes, sir.

Mr. SCHLESINGER.—Read on the other side.

Mr. ALLEN.—On the other proposal?

Mr. RIDDELL.—No, the other is just typewritten, no signature on it.

(Testimony of Mrs. Sarah E. Rubenstein.)

On recross-examination by Mr. SCHLESINGER the said witness testified as follows:

Q. I understand that you do identify that as your husband's signature?      A. Yes, sir.

Q. There can't be any question about that, can there?

A. Not on this one.      I think not on this one.

**[Testimony of W. G. Johnson, for Plaintiff.]**

W. G. JOHNSON, produced as a witness on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination by Mr. RIDDELL.

My name is W. G. Johnson.      I live at East Seattle. I am a clerk for the Seattle Hardware Company.      I have been with them sixteen years.      In 1908 my position with them was that of salesman.      I had charge of the navy business there.

Q. I show you a proposal of the Seattle Hardware Company, being a part of Plaintiff's Exhibit "7." Do you recognize any of the handwriting on that?

A. That is mine.

Q. When did you put that on there—do you recall the occasion?

A. Why, I put it on there at the time I received the proposal and opened it, from the navy pay office.

**[323—272]**

Q. You remember the occasion?      A. Yes, sir.

Q. Why didn't you bid on that?

A. Because I couldn't furnish delivery within five days.

(Testimony of W. G. Johnson.)

Q. Could you have furnished delivery within fifteen days?      A. No, sir.

On cross-examination by Mr. SCHLESINGER the said witness testified as follows:

Q. Do you know how much stock you had on hand on that date of that kind of material?

A. No stock at all, sir.

Q. Do you know when you did have any of that material on hand before that time, any quantity?

A. That quantity?

Q. Any quantity?

A. If we had any at all, it would probably be about five hundred pounds.

Q. You hadn't had any for about a year, had you, in any great quantity?      A. No quantity at all.

On redirect examination by Mr. RIDDELL the said witness testified as follows:

Q. Did you ever have any in any great quantity?

A. No, sir.

On recross-examination by Mr. MORRIS the said witness testified as follows:

Q. When you answered Mr. Riddell, I understood you couldn't have delivered five thousands pounds of this zinc in fifteen days. You [324—273] said no?      A. Not five thousand pounds.

Q. You couldn't have delivered five thousand pounds in fifteen days?

A. I could have, providing it had been in Frisco stock. I couldn't have from Seattle.